
United States
Circuit Court of Appeals
For the Ninth Circuit.

LEE LEONG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

Transcript of Record.

Upon Appeal from the United States District Court for
the Territory of Hawaii.

FILED

DEC 4 - 1913

No. 2331

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Names and Addresses of Attorneys.

For Petitioner, LEE LEONG:

GEORGE S. CURRY, Esq., #846 Kaahumanu
Street, Honolulu, Hawaii,

and

ANDREWS & QUARLES, #39 Merchant
Street, Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq.,
U. S. Immigration Inspector in Charge at
the Port of Honolulu:

ROBERT W. BRECKONS, Esq., United States
District Attorney, Honolulu, Hawaii. [1*]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

**Order Extending Time [to October 25, 1913] to
Procure and File Record on Appeal.**

Good cause appearing therefor, IT IS HEREBY
ORDERED that Lee Leong, appellant herein, may
have to and including the 25th day of October, 1913,
within which to procure from the clerk of the United
States District Court for the Territory of Hawaii, to
be filed in the United States Circuit Court of Appeals
for the Ninth Circuit, the record on appeal in said
cause as required by the praecipe filed herein.

Dated Honolulu, T. H., October 7, 1913.

CHAS. F. CLEMONS,
Judge, United States District Court, Territory of
Hawaii.

*Page-number appearing at foot of page of original certified Record.

[Endorsed]: No. 57. (Title of Court and Cause.)
Order Extending Time to Procure and File Record on
Appeal. Filed October 7, 1913. A. E. Murphy,
Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [2]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

**Order Extending Time [to October 15, 1913] to
Procure and File Record on Appeal.**

Good cause appearing therefor, IT IS HEREBY
ORDERED that Lee Leong, appellant herein, may
have to and including the 15th day of October, 1913,
within which to procure from the clerk of the United
States District Court for the Territory of Hawaii,
to be filed in the United States Circuit Court of Ap-
peals for the Ninth Circuit, the record on appeal in
said cause as required by the praecipe filed herein.

Dated Honolulu, T. H., September 13, 1913.

CHAS. F. CLEMONS,

Judge, United States District Court, Territory of
Hawaii.

[Endorsed]: No. 57. (Title of Court and Cause.)
Order Extending Time to Procure and File Record on
Appeal. Filed September 13, 1913. A. E. Murphy,
Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [3]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

**Order Extending Time [to September 26, 1913] to
Complete Record on Appeal.**

On reading and filing the affidavits of Lorrin Andrews and O. P. Soares, and good cause appearing therefor, it is hereby

ORDERED that Lee Leong, appellant in the above-entitled cause, may have to and including the 26th day of September, 1913, within which to complete the record on appeal in said cause by filing the transcript of evidence, as required by the praecipe filed herein.

September 10, 1913.

CHAS. F. CLEMONS,

Judge of the United States District Court, District
of Hawaii. [4]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

**Affidavit of Lorrin Andrews [in Support of Applica-
tion for Extension of Time to File Record on
Appeal].**

Territory of Hawaii,
City and County of Honolulu,—ss.

Lorrin Andrews, being duly sworn, deposes and

says: That he is a member of the firm of Andrews & Quarles, who, with George S. Curry, appeared as attorneys for the appellant in the above-entitled cause; that appellant duly filed his Petition on Appeal, Assignment of Errors and an Order Allowing Appeal and Citation of Appeal within two days after the judgment was pronounced in the above-entitled cause by the United States District Court for the District of Hawaii, and further paid all costs and filed a praecipe of papers required on said appeal with the Clerk of the United States court for the District of Hawaii; that thereafter, in view of the fact that said clerk was unable to prepare the record on appeal by the date required in said appeal, on the 15th day of July, 1913, by stipulation between the United States District Attorney, representing the respondent, and the attorneys representing the appellant, the time within which appellant was allowed to perfect said appeal was extended sixty days from the 15th day of July, 1913; that said time is about to expire, and, although the attorneys for appellant have used due diligence and have repeatedly requested a copy of the transcript of evidence in said [5] cause from the official stenographer, he has been unable to furnish them with the same before the 9th day of September 1913, and that as United States Circuit Court of Appeals for the Ninth Judicial Circuit, the Appellate Court herein, is in the city of San Francisco, State of California, it will be impossible to file said transcript with the other papers making up the record on appeal within the time set by the stipulation aforesaid; that deponent, therefore, asks a further extension of time

of ten days, to wit, on or before the 26th day of September, 1913, to obtain said transcript so that the same may be filed in the Circuit Court of Appeals in San Francisco.

LORRIN ANDREWS.

Subscribed and sworn to before me this 10th day of September, 1913.

[Seal]

WM. L. ROSA,

Deputy Clerk, United States District Court, Territory of Hawaii. [6]

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Petition of LEE LEONG for a Writ of Habeas Corpus.

Affidavit of O. P. Soares [in Support of Application for Extension of Time to File Record on Appeal].

Territory of Hawaii,
City and County of Honolulu,—ss.

O. P. Soares, being duly sworn, deposes and says: That he is the official stenographer of the United States Court for the District of Hawaii, and, as such stenographer, took the testimony in shorthand in the above-entitled cause; that shortly after the filing of the Notice of Appeal he was requested by the attorneys for the appellant to make up the transcript of said testimony in longhand for the purpose that the same could be used in the record on appeal; that he has been actually engaged since that time almost daily

in the taking of testimony in the United States District Court and has been unable to complete the transcript in said cause, and through great press of work he was unable to complete the same before Sept. 9, 1913; that the money due to him in said cause for making said transcript has been duly paid by the attorneys for the appellant.

O. P. SOARES.

Subscribed and sworn to before me this 9th day of September, 1913.

[Seal]

NOA W. ALULI,

Notary Public, First Judicial Circuit, Territory of Hawaii. [7]

[Endorsed]: No. 57. (Title of Court and Cause.) Order Extending Time to Complete the Record on Appeal. Affidavit of Lorrin Andrews. Affidavit of O. P. Soares. Filed Sep. 10, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [8]

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Petition of LEE LEONG for a Writ of Habeas Corpus.

Order Extending Time [Sixty Days from July 16, 1913] for Appearance [in Appellate Court].

Good cause appearing therefor, it is hereby ordered that the time mentioned in the citation on appeal herein for appearance before the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States be, and the same is hereby, extended for

SIXTY (60) days from the 16th day of July, A. D. 1913.

This order is based upon the stipulation filed herein.

S. B. DOLE,

Judge of the United States District Court, District and Territory of Hawaii.

Honolulu, Hawaii, July 16, 1913.

[Endorsed]: No. 57. (Title of Court and Cause.)
Order Extending Time. Filed Aug. 9, 1913. A. E.
Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy
Clerk. [9]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

ON APPEAL TO THE CIRCUIT COURT OF
APPEALS FOR THE NINTH JUDICIAL
CIRCUIT OF THE UNITED STATES.

**Stipulation [for Extension of Time to Appear in
Appellate Court].**

It is hereby expressly stipulated and agreed by and
between ANDREWS & QUARLES and GEO. S.
CURRY, attorneys for the above-named LEE
LEONG, appellant, and C. C. BITTING, Esquire,
Assistant United States District Attorney, in and for
the District and Territory of Hawaii, representing
the United States, Appellee herein, that, based upon
the record in the above-entitled cause, and on the affi-
davit of the clerk of the above-entitled court, the time,

mentioned in the citation on appeal herein for appearance before the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, be extended for SIXTY (60) days from the 16th day of July, A. D. 1913.

Honolulu, Hawaii, July 15, 1913.

ANDREWS & QUARLES,

GEO. S. CURRY,

Attorneys for Appellant.

C. C. BITTING,

Asst. U. S. District Attorney, District and Territory
of Hawaii. [10]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

**Affidavit [of A. E. Murphy, in Support of Extension
of Time to File Record in Appellate Court].**

United States of America,

Territory of Hawaii,

City and County of Honolulu,—ss.

And now comes A. E. Murphy, and being first duly sworn upon his oath, according to law, deposes and says; that he is clerk of the District Court of the United States in and for the District and Territory of Hawaii; that the record in the above-entitled cause on appeal to the Circuit Court of Appeals in and for the Ninth Judicial Circuit will not be and cannot be prepared or filed in the Appellate Court on or before the 16th day of July, A. D. 1913, and considerable

further time will be required by affiant for the preparation of such record.

And further deponent saith not.

A. E. MURPHY.

Subscribed and sworn to before me this 16th day of July, A. D. 1913.

[Seal]

F. L. DAVIS,

Deputy Clerk United States District Court, Territory of Hawaii. [11]

[Endorsed]: No. 57. (Title of Court and Cause.) Stipulation and Affidavit. Filed Jul. 16, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [12]

In the District Court of the United States in and for the District and Territory of Hawaii.

No. 57.

In the Matter of the Petition of LEE LEONG for a Writ of Habeas Corpus.

Statement [of Clerk U. S. District Court Showing Date of Commencement of Suit, etc.].

TIME OF COMMENCING SUIT:

May 16, 1913: Verified petition for writ of habeas corpus filed and writ issued to the United States Marshal for the District of Hawaii.

NAMES OF ORIGINAL PARTIES:

Petitioner: LEE LEONG.

Respondent: RICHARD L. HALSEY, Esq., U. S. Inspector of Immigration in charge at the Port of Honolulu.

DATES OF FILING OF THE PLEADINGS:

May 16, 1913: Petition.

May 22, 1913: Return of Richard L. Halsey.

May 26, 1913: Exceptions to Return and Motion to Discharge.

May 27, 1913: Motion to Strike Exceptions to Return.

June 5, 1913: Answer to Return.

SERVICE OF PROCESS:

May 16, 1913: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said writ afterwards returned into court with the following return by the said United States Marshal: "The within Petition, Order and Writ of Habeas Corpus was received on the 16th day of May, A. D. 1913, and returned as executed this 17th day of May, A. D. 1913, by hand upon RICHARD L. HALSEY, U. [13] S. Immigration Inspector for the Port of Honolulu and C. C. BITTING, Asst. U. S. District Attorney, by exhibiting to each of them the original Petition, Order and Writ of Habeas Corpus and handing to and leaving with each of them a certified copy of same."

HEARINGS.

May 28, 1913: Hearing on Return to Writ.

The above hearing was had before the Honorable CHARLES F. CLEMONS, Judge of said court.

DECISIONS.

June 2, 1913: Decision denying writ and ordering Petitioner remanded to custody of Respondent.

June 14, 1913: Decision allowing and fixing bail pending appeal at \$2,000.00.

JUDGMENT.

June 14, 1913: Judgment filed and entered.

PETITION FOR APPEAL.

June 16, 1913: Petition for Appeal filed and order allowing same filed. [14]

United States of America,
District of Hawaii,—ss.

I, A. E. MURPHY, Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the writ herein and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the Petition of Lee Leong for a Writ of Habeas Corpus, Number 57, in the United States District Court for the District of Hawaii.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said District Court this 15th day of October, A. D. 1913.

[Seal]

A. E. MURPHY,

Clerk, United States District Court, District of Hawaii. [15]

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Petition of LEE LEONG, for a Writ of Habeas Corpus.

Petition for a Writ of Habeas Corpus.

To the Honorable District Court of the United States in and for the District and Territory of Hawaii, and to the Honorable SANFORD B. DOLE, Judge of Said Court.

The humble petition of Lee Leong, a citizen of the United States of America, humbly represents and shows unto this Honorable Court and unto your Honor, and the petitioner alleges and charges as follows:

I.

That your petitioner was born at Waikiki, in the City and County of Honolulu, on the Island of Oahu, and Territory of Hawaii, on or about the 21st day of January, A. D. 1888, and at the time of such birth both of petitioner's parents were permanent residents of and at said Waikiki; that his father's name was Lee Sing, and his mother's name Lum Shee; that after his birth your petitioner resided and lived with his said parents at said Waikiki for a period of about four years, after which your petitioner was taken

to China by his said parents, and there resided with his parents in Sun Chin village, China, up to and [16] until the time he left for Honolulu, in the City and County of Honolulu, Island of Oahu, Territory of Hawaii, in the United States of America, in or about the month of February, A. D. 1913, and arrived at the port of said Honolulu, on or about the 10th day of March, A. D. 1913, as a passenger on the American steamship "Siberia."

II.

That petitioner's father was a resident of Waikiki, in said Honolulu, at the time of petitioner's birth, and was lawfully married to Lum Shee, the mother of your petitioner. That petitioner's parents now reside in Sun Chin village in China.

III.

That on or about the 21st day of November, A. D. 1912, the Secretary of the Territory of Hawaii, after application and upon due and orderly hearing as provided by law, issued to and for this petitioner a certificate of Hawaiian birth, certifying that this petitioner was born in the Hawaiian Islands on or about the 21st day of January, A. D. 1888, which certificate was issued under the great seal of the Territory, and to which was attached a photograph of the person so certified to have been born in the Hawaiian Islands, and by which photograph this petitioner is fully identified.

IV.

That upon the arrival at the port of Honolulu aforesaid on or about the 10th day of March, A. D. 1913, this petitioner was taken in charge by the Im-

migration Officers of the United States, and afterwards conveyed to the United States Immigration Station where he is unjustly and without warrant or authority at law imprisoned and restrained of his liberty by Richard L. Halsey, Immigration Inspector in Charge, United States Immigration Service, [17] under the claim or pretense, as petitioner is informed and believes, and so upon such information and belief alleges, that he, the said petitioner, is a Chinese laborer, and as such not entitled to land in the United States.

That on or about the 14th day of March, A. D. 1913, the said petitioner was given the semblance of a hearing to determine whether the said petitioner should be allowed to land in said Honolulu or be sent back to China, by the Immigration officers of the United States; that said hearing was not a fair and *bona fide* hearing, but the proceedings were conducted in an illegal and improper manner, and not in accordance with the acts of the Congress of the United States in such case made and provided. That petitioner attaches to this petition a copy of the said proceedings had and taken before the Immigration Officers of the United States, which copy is marked Exhibit "A," and which petitioner prays may be made a part of this petition as fully to all intents and purposes as if fully set out herein in words and figures, and petitioner attaches to this petition a copy of the certificate of Hawaiian birth presented, marked Exhibit "B," and which petitioner prays may be made a part of this petition as fully to all intents and purposes as if fully set out

here in words and figures. That upon said semblance of a hearing such certificate of Hawaiian birth was presented by the petitioner to the Immigration Officers of the United States, and a large number of witnesses were examined by such officers, and testified that petitioner was born at Waikiki as aforesaid, and identified him. And petitioner further alleges that such proceedings were conducted in an illegal and improper manner and the Immigration Officers of the United States did not arrive at a conclusion nor make any findings based upon the testimony of such witnesses, and did not give proper weight, nor any weight, to the [18] certificate of Hawaiian birth presented, nor did the said Immigration Inspector in Charge base his conclusion on the evidence offered, nor did he give to such certificate the weight to which it is entitled by the laws of the United States in such case made and provided, but the said Inspector in Charge, in spite of the evidence offered, and in spite of the certificate presented as aforesaid, denied petitioner admission and ordered him deported to China, in excess of his jurisdiction, and without giving to the petitioner a fair and impartial hearing.

And the said Inspector in Charge examined several additional witnesses on or about the 1st day of April, A. D. 1913; that such witnesses testified fully, clearly and concisely that petitioner was born at Waikiki as aforesaid, and fully identified him, but the said Inspector in Charge, without giving such further evidence any consideration, dismissed it with the remark

“I see no reason to change the opinion already formed.”

And the several questions propounded to the petitioner and the numerous witnesses by the Immigration Officers of the United States show that the said officers were biased and prejudiced, and their sole purpose was not to give a fair hearing, but that the said several questions so propounded were propounded with the definite purpose and view to mislead, confuse and raise doubt as to the undoubted right of this petitioner to land in said Honolulu, and there was an utter disregard of the rights of the petitioner thereby and by reason thereof, and the said Inspector in Charge without evidence, and without the semblance of a right and without authority of law, denied this petitioner a landing at said Honolulu, but acted arbitrarily, contrary to and in violation of the evidence heard by him, contrary to law and the rights of this petitioner, and denied petitioner the right [19] and benefit of his birth in Hawaii. Petitioner appealed from said decision to the Department of Commerce and Labor, which arbitrarily, contrary to law and said evidence, affirmed said decision.

V.

And your petitioner further shows that he is held in custody, detained, imprisoned and deprived of his liberty by said Richard L. Halsey, in violation of the Constitution of the United States, to wit: Article 14, Constitutional Amendments, and contrary to the Act of the Congress of the United States in such case made and provided, as petitioner is in-

formed and believes, and upon such information and belief alleges and avers, under and by virtue of the claim as aforesaid, and threatens to deport your petitioner to China at the earliest opportunity, and your petitioner further shows that said holding in custody, detention and imprisonment, and such threat to deport are illegal for the reasons hereinbefore set forth.

WHEREFORE, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said Richard L. Halsey, United States Immigration Inspector in Charge, as aforesaid, may issue in this behalf, so that your petitioner may be forthwith brought before this Honorable Court, to do, submit to and receive what the law may direct.

(Sgd.) LEE LEONG,
Said Petitioner.

Dated, Honolulu, Hawaii, May 16, 1913.

(Sgd.) GEO. S. CURRY,

(Sgd.) ANDREWS & QUARLES,
Attorneys for Petitioner. [20]

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

And now comes Lee Leong, who being first duly sworn, upon his oath, according to law, deposes and says: That he is the petitioner named in the above and foregoing petition for a writ of *habeas corpus* subscribed by him; that he has heard the same read over to him and knows the contents thereof, and that

the matters and things therein set forth and contained are just, true and correct, except as to those matters and things therein alleged on information and belief, and as to them he verily believes them to be true.

(Sgd.) LEE LEONG,
Petitioner.

Subscribed and sworn to before me, by the said Lee Leong, this 16th day of May, A. D. 1913.

[Seal] (Sgd.) P. H. BURNETTE,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [21]

**Petitioner's Exhibit "A" [to Petition for Writ of
Habeas Corpus—Testimony Taken Before Im-
migration Inspector].**

Copy. Honolulu, T. H., March 14, 1913.
Case of LEE LEONG ex SS. "Siberia," 3/10/13.
Manifest No. HK. 3-6.

HARRY B. BROWN, Inspector.
TONG KAU, Interpreter.

Applicant presents Hawaiian Birth certificate No. 95A, dated Nov. 21, 1912.

[Testimony of Lee Leong.]

Applicant, sworn, testifies:

Q. What is your name?

A. Lee Leong—no others.

Q. Are you married? A. Yes.

Q. What is your married name?

A. Lee Ling Hoo.

Q. How old are you? A. 25.

Q. What is the date of your birth?

(Testimony of Lee Leong.)

A. Feb. 21, 1888.

Q. What is the Chinese date?

A. I don't remember the day and month. The year was K. S. 14 (1888).

Q. What is your occupation? A. Peddler.

Q. Do you desire an attorney and an interpreter present during the hearing of your case? A. No.

Q. Where have you been living in China?

A. Sun Chin.

Q. Are your parents living? A. Yes.

Q. What are the names of your father and his age?

A. Lee Sing and Lee Chuck Hing; aged 55.

Q. What is the name and age of your mother?

A. Lum Shee; aged 46.

Q. What kind of feet has she? A. Bound.

Q. How many brothers and sisters have you?

A. One sister only.

Q. What is the name and age of your sister?

A. Lee Moy; aged 23.

Q. Is she married? A. Yes.

Q. To who and where?

A. Mr. Wong, and Ban Mee Yuen village.

Q. How long has she been married?

A. 4 or 5 years.

Q. Has she any children? A. One daughter.

Q. How old is this daughter? A. 4 years.

Q. When were you married?

A. 4 years ago.

Q. Who was married first, you or your sister?

A. I was.

Q. What is the name of your wife?

(Testimony of Lee Leong.)

A. Lum She.

Q. How old is she? A. 21.

Q. What kind of feet has she? A. Bound.

Q. What village did your wife come from?

A. On Tong.

Q. How many children have you? A. One son.

Q. What is his name and age?

A. Lee Saukun; aged 3.

Q. Are your father's parents living? A. No.

Q. When did they die?

A. Long ago, more than 20 years.

Q. What were their names?

A. Lee On Sun, and mother was Wong She.

Q. What village did your mother come from?

A. On Tong.

Q. Are her parents living? A. No.

Q. How many brothers and sisters has your mother?

A. One. Brother Lum Kwai Sau; he is in On Tong village.

Q. How many brothers and sisters has your father?

A. None.

Q. Did he ever have any that died? A. No.

Q. What is your father's occupation?

A. Peddler.

Q. What is he peddling?

A. He is a storekeeper.

Q. What kind of a store has he?

A. General merchandise.

Q. What is the name of that store?

A. Ming Lee.

(Testimony of Lee Leong.)

Q. Where is the store? A. Sun Chin.

Q. How long has he had the store?

A. 4 or 5 years.

Q. What did your father do before that?

A. Before that he was a banana planter, in Honolulu.

Q. When your father went to China did he get a paper to return to Hawaii? A. No.

Q. When did he return to China from Hawaii?

A. 21 years ago. [22]

Q. You told me a little while ago that your father had had this store for 4 or 5 years. Now, you say that he returned to China 21 years ago. What did he do from the time he went to China until the store was started? A. Nothing to do.

Q. Are you sure that your father did nothing at all these years?

A. Sometimes he did farm work.

Q. Was your father sick or crippled in any manner? A. No.

Q. How long have you been a peddler?

A. 4 or 5 years; sometimes I was in my father's store, and sometimes I peddled.

Q. What did you peddle?

A. The goods from my father's store.

Q. Have you ever been in Hawaii before?

A. Yes, I was born here.

Q. Where were you born? A. Waikiki.

Q. How do you know that you were born at Waikiki? A. My mother told me so.

Q. When did you first learn that you were born

(Testimony of Lee Leong.)

here? A. When I was 12 or 13 years old.

Q. When did you go to China from *China*?

A. When I was 4 years old.

Q. Who took you to China? A. My parents.

Q. Did your father return to Hawaii after taking you to China? A. No.

Q. Do you know why your father took you to China and remained there?

A. He had saved money.

Q. Where was your sister born? A. Waikiki.

Q. When did she go to China?

A. When she was 2 years old.

Q. Who took her to China?

A. She went the same time I did.

Q. What boat did you go to China on?

A. I don't know.

Q. Did your mother ever tell you? A. No.

Q. Did you ever hear anyone else than your mother say that you were born in Hawaii?

A. No.

Q. Did you ever hear your father talk about his being in Hawaii? A. No.

Q. Then how do you know that your father was in Hawaii? A. My mother told me so.

Q. Since your father has had this store, has any of the people from Hawaii been to this store and talked with him?

A. Some came back from Hawaii, but they did not talk together.

Q. Did you ever hear your father talk to anyone about Hawaii or about his being here? A. No.

(Testimony of Lee Leong.)

Q. Did your mother ever talk to you more than once about your being born in Hawaii?

A. No; many times.

Q. Did she ever talk to you about it in the presence of your father? A. Yes.

Q. Did your father ever say anything about things in Hawaii? A. No.

Q. As I understand he just sat there and let your mother talk to you about your being born in Hawaii, and he never said a word? A. Yes.

Q. When did your mother tell you about Hawaii?

A. She just said I was born in Honolulu.

Q. You told me that you were born in Waikiki.

A. She said Waikiki.

Q. What reason did she have for telling you this so many times and not say anything else?

A. Sometimes we would sit together and she would tell me.

Q. Did you ever hear your mother talk to your father about the time they were in Hawaii?

A. I did not hear.

Q. Then, as I understand it, sometimes when you and your mother were sitting together she would say, "Ah Leong, you were born in Waikiki, Honolulu"?

A. Yes.

Q. Did you never ask her about your birthplace?

A. No.

Q. Why not—would you not like to know about your birthplace? A. I never asked.

Q. Did you never think, "I wonder what kind of a place I was born in"? A. No. [23]

(Testimony of Lee Leong.)

Q. Why are you coming here now?

A. I came to work.

Q. What kind of work? A. Anything.

Q. How do you know that there is work to be had here? A. My cousin told me so.

Q. Did your mother ever tell you that there was work to be had here? A. No.

Q. When you left China at this time for Hawaii did your mother send any messages to her old friends here? A. No.

Q. Did she not tell you to visit any of the people she used to know after you were admitted?

A. No.

Q. Did your father give you any messages?

A. No.

Q. Who is there in Hawaii that you know and can identify? A. Lee Wo, Lee Yet.

Q. Any other here? A. No.

Q. Lots of people here from Sun Chin?

A. They are all that I know.

Q. Are you sure that there are not other people here that you know whom you have seen in peddling or at your father's store? A. No.

Q. When did you see Lee Wo last?

A. Two years ago.

Q. What is his village in China? A. Sun Chin.

Q. What is his other name? A. Lee Teu Hoo.

Q. What family has he in China?

A. His parents, wife and one son.

Q. What is the name of his father?

A. Lee Sin Sum.

(Testimony of Lee Leong.)

Q. What is the name of Lee Wo's wife?

A. Siu She.

Q. What is the name and age of the boy?

A. Lee Sau Tung; aged 7.

Q. When did you see Lee Yet last?

A. A little over a year ago.

Q. What is his other name?

A. Lee Kau Hoo.

Q. What family has he in China?

A. Father, his wife and daughter.

Q. What is the name of his father?

A. Lee Chan—Lee Ping Yip.

Q. Was he ever in Hawaii? A. I don't know.

Q. How long have you been acquainted with him?

A. Since I can remember.

Q. What is the name of Lee Yet's wife?

A. Lum She.

Q. What is the name and age of the daughter?

A. Lee Moy; aged 3.

Q. When was the first time that you saw Lee Yet?

A. Over 10 years ago.

Q. When did Lee Yet first come to Hawaii?

A. Over 20 years ago.

Q. Do you know how many times he has been back to China? A. Two or three times.

Q. Any further statement that you wish to make?

A. No.

(S.) _____.

Subscribed and sworn to before me this 14th day of March, 1913.

(S.) HARRY B. BROWN,
Immig't and Act'g Chinese Insp.

(Testimony of Lee Yet.)

The foregoing testimony has been translated to the affiant by me and before signing he has acknowledged that it is a correct record and that he fully understood the same.

(S.) TONG KAU,
Interpreter.

[Testimony of Lee Yet.]

Case of LEE LEONG, as "Siberia," March 10, 1913.

Inspector MERLEN J. MOORE.

Interpreter, CHUCK HOY.

Witness LEE YET, sworn, testifies: C. R. No. 10652, Lee Yet, verified 11/29/10.

Q. What are your names?

A. Lee Yet and Lee Kau Hoo.

Q. How old are you? A. 37 years old.

Q. Where were you born?

A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. When I was 22 years old.

Q. Have you been back since?

A. Yes, two times.

Q. When did you go back the first time?

A. K. S. 26 (1900).

Q. When did you go back the second time?

A. 1911.

Q. Are you married?

A. Lum Shee; 30 years old; bound feet; living in the Sun Chin village. [24]

Q. Have you children?

A. One daughter, no sons; Lee Moy, 2 years old; born after I left China.

(Testimony of Lee Yet.)

Q. What is your occupation?

A. I am butcher working at the Paragon market, Honolulu.

Q. How long have you worked for the Paragon?

A. About 3 months.

Q. What did you do before that?

A. I was a member and planting vegetables at Hop Wo vegetable plantation, at Pawaa, Oahu.

Q. How long were you planting vegetables?

A. Since I returned from China, 1911.

Q. What is your object in coming to this office to-day?

A. Witness for Lee Leong.

Q. Are you any relation to him?

A. His grandfather and my grandfather were brothers.

Q. Is Lee Leong married?

A. Yes, to Lum Shee; don't know age.

Q. Did you ever see this Lum Shee?

A. Yes.

Q. What kind of feet has she?

A. Bound feet.

Q. Have they any children?

A. I don't know.

Q. When was Lee Leong married?

A. I don't know; he was married when I was in China last.

Q. Do you know Lee Leong's father's name?

A. Lee Sing, or Lee Chuck.

Q. Do you know Lee Leong's mother's name?

A. Lum Shee, 50; bound feet.

Q. Has Lee Leong any brothers or sisters?

A. One sister, no brothers; we called her Lee Moy; 23 or 22 years old.

(Testimony of Lee Yet.)

Q. Is she married?

A. I think she is married to Mr. Wong, Ban Mee Yuen village.

Q. When was she married?

A. I don't know; she was married when I was last in China.

Q. Has she children? A. I don't know.

Q. Are the paternal grandparents of Lee Leong living? A. No; both are dead.

Q. When did they die? A. Long time ago.

Q. Do you know their names?

A. Lee On Sum and Wong She.

Q. Are his maternal grandparents living?

A. I don't know.

Q. Has Lee Leong's father any brothers or sisters?

A. He has one brother, Lee Ming, but he is in a foreign country.

Q. Where is he now?

A. Not in a foreign country; but a long distance from his home village.

Q. When was Lee Ming last in the Sun Chin village to your knowledge?

A. I have not seen him for 10 years.

Q. Did you see Lee Ming ten years ago?

A. I saw him before I first came to Hawaii.

Q. That is about 15 years ago? A. Yes.

Q. Did you see Lee Ming in China in 1900 when you were in China? A. No.

Q. Where was Lee Ming at that time?

A. No, he was in Dow Mon at that time.

Q. Is he a blood brother of Lee Sing, applicant's

(Testimony of Lee Yet.)

father? A. Yes.

Q. How old is Lee Ming? A. I don't know.

Q. Is he older or younger than Lee Sing?

A. Younger.

Q. Has Lee Sing a sister? A. No.

Q. Did he ever have any brothers or sisters who died? A. I do not know.

Q. What was Lee Sing doing in the Sun Chin village when you were there in 1910 and 1911?

A. He had a little store there.

Q. What kind of a store was it?

A. Merchandise and small candies and crackers.

Q. Do you know the name of that store?

A. Ming Lee.

Q. What was Lee Sing doing in 1900 when you were there?

A. Nothing—planting a little vegetables at that time.

Q. What was Lee Leong doing when *you* in China in 1910–1911?

A. He was in the same store and selling pork.

[25]

Q. What were his duties there?

A. He was a butcher in the store.

Q. Then I understand they carried a line of meat in the store? A. Yes, pork only.

Q. Did you visit Lee Sing's house on your visit in 1910? A. Yes.

Q. How far is your house from Lee Sing's house in the Sun Chin village?

A. From here to the Capitol Building. (About three-fourths mile.)

(Testimony of Lee Yet.)

Q. How large is the Sun Chin village?

A. 400 or 500 houses.

Q. How long did you stay in the Sun Chin village on your last visit there? A. About 7 months.

Q. Did you make frequent visits to Lee Sing's house?

A. Once in a while; don't remember how many times.

Q. Where was Lee Leong born?

A. Waikiki, Honolulu.

Q. Whereabouts at Waikiki?

A. In Kong Sing's banana plantation.

Q. Were you living at that time in Hawaii?

A. No.

Q. Then how do you know he was born in Waikiki?

A. His parents said so, and it was common knowledge in the village.

Q. Do you know when Lee Sing first came to Hawaii? A. I do not know.

Q. Do you know when Lee Sing's wife came to Hawaii? A. No.

Q. Did you ever see Lee Sing in Hawaii?

A. No.

Q. Did you ever see Lum She, his wife in Hawaii?

A. No.

Q. Did you ever see Lee Leong in Hawaii?

A. No.

Q. How old was Lee Leong when you first saw him? A. 3 or 4 years old.

Q. Where did you see him? A. Sun Chin.

(Testimony of Lee Yet.)

Q. Then you do not know whether Lee Sing was ever in Hawaii or not?

A. No; I was young at that time.

Q. How long did you know Lee Leong after you saw him when he was 3 or 4 years in the Sun Chin village before you came to Hawaii?

A. Five or six years.

Q. Then how old was Lee Leong when you came to Hawaii? A. 8 or 9 years old.

Q. Did you see Lee Leong before you came to Hawaii for the first time? A. Yes.

Q. And he was 8 or 9 years old at that time?

A. Yes.

Q. Did Lee Leong ever tell you he was born in Hawaii? A. Yes.

Q. When did he tell you that?

A. The last time I was in China, 1910.

Q. Did Lee Leong tell you that he was born in Hawaii before you came to Hawaii, or when he was 8 or 9 years old? A. Yes.

Q. What did he tell you at that time?

A. He was in my house and was talking and he said his father and mother had been in Hawaii and that he was born in Hawaii.

Q. When did he tell you this?

A. Just a short time before I came to Hawaii.

Q. Did Lee Leong know that you were coming to Hawaii at that time? A. I think he knew it.

Q. Did you tell him that you were coming to Hawaii? A. No.

Q. Then how is it that he happened to tell you

(Testimony of Lee Yet.)

that he was born here?

A. I may have spoken to him about it but I forget now. But the last time he told me.

Q. What did he tell you about being born in Hawaii in 1910?

A. He said to me that he would like to return to Hawaii because he was born here, and he asked me to get a paper for **him to come**.

Q. Was that all? A. Yes.

Q. Did Lee Leong ever speak to you about being born in Hawaii on any other occasion? A. No.

Q. Did you speak about his Hawaiian birth when you were in China in 1900? A. Yes.

Q. What did he tell you in 1900?

A. He told me that he was born here and asked me about Hawaii.

Q. Did Lee Sing ever talk to you about Lee Leong being born in Hawaii? A. Yes. [26]

Q. When did he talk to you about this matter?

A. Every time I was in China.

Q. Did Lum She, applicant's mother, ever talk to you about it? A. Yes.

Q. Did they talk to you about Lee Leong being born here before you came to Hawaii the first time?

A. Yes.

Q. Did Lee Sing and his wife talk to you about Lee Leong's Hawaiian birth in the presence of Lee Leong before you came to Hawaii?

A. I remember Lee Sing and Lum She were present.

Q. Do you remember of any conversation you had

(Testimony of Lee Yet.)

concerning the birth of Lee Leong prior to your coming to Hawaii when Lee Leong was present?

A. I remember one time Lee Leong was present with his parents but Lee Leong did not say anything about it.

Q. Then, as I understand it, the subject of the Hawaiian birth of Lee Leong was frequently discussed in Sun Chin prior to your coming to Hawaii?

A. Yes, but Lee Leong was small then.

Q. Who paid Lee Leong's passage?

A. I think his parents did.

Q. Did you send the money? A. No.

Q. Have you anything further to say? A. No.

(S.) _____.

Subscribed and sworn to before me this 15th day of March, 1913.

(S.) MERLEN J. MOORE,
Imm. and Act. Chinese Insp.

The foregoing testimony has been translated by me to affiant named therein and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Lee Wo.]

Case of LEE LEONG.

Witness LEE WO, sworn, testifies: C. R. 4807,
Lee Wo, certified July 5, 1905.

Q. What are your names?

A. Lee Wo and Lee Hoo.

Q. How old are you? A. 41 years old.

(Testimony of Lee Wo.)

Q. Where were you born?

A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. About 17 years ago.

Q. Have you been back since?

A. Twice, 1905, first time.

Q. Have you ever been to China since?

A. In 1910.

Q. How long were you in Sun Chin village on your 1910 trip? A. 8 or 9 months.

Q. Are you married?

A. Yes, to Siu Shee; 26; natural feet.

Q. Have you any children?

A. One son, Lee Sau Tong, 8 years old; no girls.

Q. What is your occupation?

A. Carpenter, Honolulu.

Q. How long have you been a carpenter?

A. Many years.

Q. What is your object in coming here to-day?

A. Come to be a witness for Lee Leong.

Q. Where was he born?

A. I don't know; I know he was in the Hawaiian Islands.

Q. Do you know whereabouts in the Hawaiian Islands?

A. I do not know; I was in China at that time.

Q. Are Lee Leong's parents living? A. Yes.

Q. Do you know them personally? A. Yes.

Q. What are their names?

A. Lee Sing, and Lee Chuck Hing, over 50, and mother's name Lum She, over 40.

(Testimony of Lee Wo.)

Q. What kind of feet has Lum She?

A. Used to be bound feet.

Q. When did you last see Lum She?

A. About 2 years ago.

Q. Did she have bound feet at that time?

A. I saw that she had bound feet. [27]

Q. Are you any relation to Lee Sing?

A. Distant cousin; same family name.

Q. Has applicant Lee Leong any brothers or sisters?

A. No; he has no brothers, just one sister.

Q. Do you know her name?

A. Lee Moy; about 21 or 22 years old.

Q. Did you see her when you was in China in 1910? A. No.

Q. When did you last see her?

A. Before I came to Hawaii over 17 years ago.

Q. How old was she at that time?

A. Four or five years old.

Q. Where was she born?

A. Also born at Honolulu.

Q. You say she was born in Honolulu also; do you infer that Lee Leong was born in Honolulu?

A. Yes; I heard that he was born in Honolulu.

Q. Whereabouts at Honolulu?

A. I think it was Waikiki.

Q. Where is Waikiki?

A. I heard that he was born at Kong Sing's banana plantation.

Q. You told me a few months ago that you did not know where Lee Leong was born, but that he was

(Testimony of Lee Wo.)

born somewhere in the Hawaiian Islands; now you give me the exact spot. A. I forget.

Q. How old was Lee Leong when you first saw him? A. 3 or 4 years old.

Q. How long did you know him after he was 3 or 4 years old?

A. About 7 or 8 years before I came to Hawaii. I mean I knew him until he was 7 or 8 years old before I came to Hawaii.

Q. Do you mean that Lee Leong was 7 or 8 years old when you came to Hawaii? A. Yes.

Q. Did Lee Leong ever tell you that he was born in Hawaii?

A. No, but the people about the village and his parents told me.

Q. Did Leong's parents ever tell you that he, Lee Leong, was born in Hawaii prior to your coming here? A. Yes.

Q. Did you ever visit the house Lee Sing in the Sun Chin village before you first came to Hawaii?

A. Yes.

Q. Did you visit that home frequently?

A. Yes, once in a while.

Q. Did you generally see Lee Leong in the house?

A. Yes.

Q. And on such occasions did you ever talk about Lee Leong being born in Hawaii? A. Yes.

Q. And was Lee Leong ever present when you were talking about his birth?

A. He was present, but I do not know whether he listened or not.

(Testimony of Lee Wo.)

Q. Did Lee Leong ever tell you that he was born in Hawaii?

A. Yes, the last time I was in China he was talking to me about it.

Q. You just told me a moment ago that he never did tell you anything about his birth.

A. He did the last time.

Q. When was the last time you were in China?

A. Year before last.

Q. What did he tell you at that time?

A. He said that he was born here and would like to return back here again if he could.

Q. Did you ever see applicant's parents in Hawaii? A. No.

Q. Did you ever see applicant Lee Leong in Hawaii? A. No.

Q. Then as far as you know you do not know whether applicant Lee Leong was ever in Hawaii or not?

A. No, only hear people say so, and I know he went from China to Hawaii at that time.

Q. Do you remember the arrival of the applicant from Hawaii?

A. Yes, and they mentioned they were from Hawaii.

Q. How old was applicant at that time?

A. About 4 years old.

Q. Did applicant return alone?

A. His parents were with him.

Q. Anyone else? A. And sister.

Q. Is Lee Leong married?

(Testimony of Lee Wo.)

A. Yes, he was married before I went to China last.

Q. Do you know his wife's name?

A. Lum She, don't know age.

Q. Did you ever see Lum She? A. Yes.

Q. What kind of feet has she?

A. Bound feet.

Q. Have they any children?

A. One son, very small infant when I was in China.

Q. Are your parents living?

A. Mother living. [28]

Q. When did your father die?

A. 37 years ago, on—when I was 4 years old.

Q. What was his name? A. Lee Sing Yip.

Q. He *be* another name? A. Lee You.

Q. What is your mother's name?

A. Siu Shee.

Q. Have you anything further to say?

A. No.

(S.) _____.

Subscribed and sworn to before me this 14th day of March, 1913.

(S.) MERLEN J. MOORE,
Immi. and Act. Chinese Inspector.

The foregoing testimony has been translated by me to affiant named herein and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Siu Sam.]

Case of LEE LEONG.

Witness SIU SAM (Siu Shee) sworn, testifies:

C. R. No.

Q. What are your names?

A. Siu Shee, and Siu Sam; no other name.

Q. How old are you? A. 50 years old.

Q. Have you a certificate of residence?

A. Yes, but I forgot to bring it. (Witness instructed to present same at this office.)

Q. Where were you born?

A. Na, Mon, China.

Q. When did you first come to Hawaii?

A. 30 years ago.

Q. Are you married?

A. Yes, to Lee Mung, and Lee Ngin Ngip.

Q. How old is he? A. 64 years old.

Q. Is he living?

A. Yes, Honolulu, Wailae.

Q. Have you any children?

A. Four sons and six daughters.

Q. Where were your children born?

A. All born in Hawaii.

Q. *What your husband's occupation?*

A. Nothing.

Q. What did he used to do?

A. Planting taro and banana about Honolulu.

Q. When did he first come to Hawaii?

A. When he was 26 years old.

Q. Have you ever been to China since coming here 30 years ago? A. No.

(Testimony of Siu Sam.)

Q. What is your object in coming here to-day?

A. I have come to be a witness for Lee Leong, son of Lee Sing.

Q. What is Lee Sing's other name?

A. I do not know.

Q. Do you know Lee Leong's mother's name?

A. Lum She, 49; bound feet.

Q. Was she ever in Hawaii? A. Yes.

Q. Was Lee Sing ever in Hawaii? A. Yes.

Q. Do you know when he came to Hawaii?

A. I don't know.

Q. Do you know when Lum She came to Hawaii?

A. She came here a short time before I came.

Q. And you came here 30 years ago?

A. I saw her at Kong Sing banana plantation at Waikiki.

Q. When did you first see her there?

A. When I first landed here.

Q. How long had she been in Hawaii before that?

A. I don't know; I think a few months before I came.

Q. Was Lee Sing in Hawaii then? A. Yes.

Q. Was he the husband of Lum Shee at that time?

A. Yes.

Q. How many children did Lum Shee have when you first came here? A. No children.

Q. Did Lum Shee ever have any children born to her in Hawaii? A. Yes.

Q. Did you live with Lum She after you came to Hawaii? A. No, but a short distance away.

Q. How far away? A. A few hundred feet.

(Testimony of Siu Sam.)

Q. How long after you came here was it before Lum Shee had children?

A. Four or five years.

Q. Then Lum Shee and Lee Sing lived together as man and wife for four or five years without children; is that right? A. Yes.

Q. Rather unusual, don't you think, for Chinese people? A. Sometimes that way. [29]

Q. How many children did Lum Shee have in Hawaii? A. Son and daughter.

Q. Do you know the names of those children?

A. Lee Leong and Lee Moy.

Q. How many years is there between Lee Leong and Lee Moy? A. About 2 years.

Q. Did Lum Shee have any children born in Hawaii, who died? A. No.

Q. Did Lum Shee have any children born in China? A. I don't know.

Q. How long did Lee Sing and Lum Shee continue to live at Waikiki after you came here?

A. I don't remember.

Q. About how long? A. About 10 years.

Q. And were you living at Waikiki all that time?

A. I lived there about 10 years, and then I moved to Pauoa and lived there 10 years.

Q. Was Lee Sing still living at Waikiki when you moved away?

A. No, he left for China a short time before I moved to Pauoa.

Q. How old was Lee Leong when you last saw him?

(Testimony of Siu Sam.)

A. I first saw him when he was three or four days old, and about four years old when I last saw him.

Q. Were there any other Chinese living in the immediate neighborhood besides your family and Lee Sing's family at the time of Lee Leong's birth?

A. Yes, another family, Lee Ming.

Q. Was he any relation to Lee Sing?

A. Same family and from the same village.

Q. Was Lee Ming the blood brother of Lee Sing?

A. No.

Q. Was Lee Ming married? A. Yes.

Q. What was her name?

A. Wong Shee; bound feet.

Q. Did she have children? A. Two sons.

Q. Give me their names.

A. Lee Kum Kee and Lee Hai Ho.

Q. Do you think you could identify Lee Leong if you were to see him now?

A. No, so small when he went away.

Q. Do you know what year Lee Sing returned to China with his family? A. No.

Q. Can you tell me about what year? A. No.

Q. Is Lee Leong married? A. I don't know.

Q. Have you anything further to say? A. No.

(S.) XXX SIU SAM (her mark).

Subscribed and sworn to before me this 14th day of March, 1913.

(S.) MERLEN J. MOORE,
Immi. and Act. Chinese Inspector.

(Testimony of Lee Keau.)

The foregoing testimony has been translated by me to affiant named therein and before signing she has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Lee Keau.]

Case of LEE LEONG.

Witness LEE KEAU (KOW), sworn, testifies: C.

R. No. 486, Lee Keau. Verified Oct. 25, 1910.

Q. What are your names?

A. Lee Keau (Kow) and Lee Look Hoo.

Q. How old are you? A. 30 years old.

Q. Where were you born? A. Sun Chin.

Q. When did you first come to Hawaii?

A. K. S. 23 (1897).

Q. Have you been back to China since?

A. Yes, in 1910.

Q. How long did you stay in Sun Chin village on that occasion? A. About 10 months.

Q. Are you married?

A. Yes, to Lum Shee; 22; natural feet.

Q. Have you any children?

A. One son, Lee Chan; 2 years old now.

Q. What is your occupation?

A. Rice planter, at Pawaa, Honolulu.

Q. What is your object in coming to this office to-day? A. Witness for Lee Leong.

Q. Where was he born?

A. Waikiki, Honolulu.

Q. How do you know that?

A. I was in the Sun Chin village at the time the

(Testimony of Lee Keau.)

boy reached China from Hawaii and everybody called him foreign boy.

Q. How old were you at that time?

A. Four or five years old.

Q. Do you remember Lee Leong coming from Hawaii to your native village? A. Yes. [30]

Q. And how old did you say you were?

A. About ten years old at that time.

Q. You have just stated you were three or four years old? A. I mean Lee Leong was.

Q. Who was with Lee Leong at the time he returned from Hawaii? A. His parents.

Q. Do you know their names?

A. Lee Sing; don't know his other name.

Q. Do you know the name of Lee Leong's mother?

A. Lum Shee.

Q. What kind of feet has she? A. Bound.

Q. How old was Lee Leong the last time you saw him? A. About 20 or more.

Q. How old was he at the time you first came to Hawaii? A. About 10 years old.

Q. Did Lee Leong ever tell you that he was born in Hawaii? A. Yes.

Q. Did he ever tell you that he was born in Hawaii before you came here? A. Yes.

Q. How old was Lee Leong at that time?

A. 8 or 9 years old.

Q. What did he tell you?

A. Someone called him a foreign boy, and then he told me that he was born in the Hawaiian Islands.

Q. When you found out or determined to come to

(Testimony of Lee Keau.)

Hawaii did you ask him anything about the Islands?

A. No.

Q. Why didn't you if you knew he was born here?

A. I lived far distance from him, and did not have time to talk.

Q. Did you live in the same village with him?

A. Yes.

Q. Did Lee Sing or Lum Shee ever tell you that Lee Leong was born here? A. Yes.

Q. When did they tell you?

A. Before I first came to Hawaii, and the last time I went to China.

Q. Was Lee Leong present when you were talking about his birth in Hawaii with his parents?

A. No.

Q. Do you remember of a single instance when Lee Leong was present?

A. Yes, I remember once.

Q. When was this?

A. Before I first came to Hawaii.

Q. Do you remember any other time?

A. No, just once.

Q. What did Lee Leong tell you about this birth in Hawaii when you were in China in 1910?

A. He said that he wished to return to Hawaii and told me that he was born here.

Q. Is he married? A. Yes.

Q. What is his wife's name?

A. I don't know.

Q. Did you ever see her? A. No.

Q. Has Lee Leong any children?

(Testimony of Lee Keau.)

A. I don't know.

Q. Did you ever hear anyone say? A. No.

Q. Has Lee Leong any brothers or sisters?

A. One sister, Lee Moy, I think.

Q. How old is she?

A. One or two years younger than Lee Leong; she is married.

Q. How do you know she is married?

A. I heard her mother say so.

Q. When did you last see Lee Moy?

A. Before I first came to Hawaii.

Q. How old was she then?

A. Same as Lee Leong.

Q. About how old was she when you came to Hawaii?

A. (After figuring and counting for several minutes) 6 or 7 years old.

Q. Where was she born? A. Hawaiian Islands.

Q. Did you ever see Lee Leong in Hawaii?

A. No.

Q. Then you don't know whether he was born in Hawaii or not?

A. No, but his parents said so, and it was common knowledge of the people.

Q. Did you ever deliver any money or take a package from Hawaii to applicant or his parents in China? A. No.

Q. Did you visit applicant's house when you were in China? A. Yes.

Q. Did you call there very often?

A. Several times. [31]

(Testimony of Lee Keau.)

Q. When was Lee Leong married?

A. Before I went to China in 1910.

Q. Do you think you could identify applicant if you were to see him now? A. Yes.

Q. Have you anything further to say?

A. No.

(S.) _____

Sworn and subscribed to before me this 14th day of March, 1913.

(S.) MERLEN J. MOORE,
Imm. and Act. Chinese Inspector.

The foregoing testimony has been translated to affiant named therein by me, and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Lee Chew.]

Case of LEE LEONG.

Witness LEE CHEW, sworn, testifies: C. R. No. 4875, not verified.

Q. What are your names?

A. Lee Chew, and no other name.

Q. Are you married? A. No.

Q. Were you ever married? A. No.

Q. How old are you? A. 49 years old.

Q. Where were you born?

A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. K. S. 11 (1886).

Q. Have you ever been to China since? A. No.

(Testimony of Lee Chew.)

Q. What is your occupation?

A. Peddling vegetables.

Q. Have you always peddled vegetables in Hawaii?

A. No, for the last five years or six years.

Q. What did you do when you first came to Hawaii? A. Rice planter at Palolo, Honolulu.

Q. How long did you plant rice at Palolo?

A. About 1 year.

Q. And then what did you do?

A. Then I went to Waikiki and worked for Kong Wo banana plantation.

Q. Was that plantation known by any other name?

A. No.

Q. Did you ever hear of the Kong Sing banana plantation? A. Yes.

Q. Where is that plantation?

A. Yes, Kong Sing is on the upper part of the Kwong Wo In.

Q. Are they two separate plantations? A. Yes.

Q. Are those plantations still in existence to-day?

A. Yes.

Q. Were they in existence when you first came to Hawaii?

A. Yes, only they have changed hands, but are called the same names.

Q. Are you sure of that? A. Yes.

Q. How long did you work for the Kwong Wo In?

A. About a year and two months.

Q. Then where did you go?

A. Then I went out and peddled fruits.

Q. Where? A. In Honolulu.

(Testimony of Lee Chew.)

Q. Where did you live when you were peddling fruits? A. Maunakea Street.

Q. Then you were not living at Waikiki at that time? A. No.

Q. What is your object in coming here to-day?

A. Witness for Lee Leong.

Q. Where was he born? A. Waikiki.

Q. Do you know his parents? A. Yes.

Q. Give me their names?

A. Lee Sing, don't know his other name, Lum Shee.

Q. Were these people ever in Hawaii?

A. Yes, living at Waikiki.

Q. Where at Waikiki?

A. He was working for the Kong Sing banana plantation.

Q. Did Wong Sing come to Hawaii before you did? A. Yes.

Q. How long before?

A. I don't remember, but I saw him when I first came here.

Q. Did you know him in China? A. No. [32]

Q. Explain, then, how you saw him immediately upon your arrival here?

A. I went to work for a plantation right near him.

Q. Was Lee Sing married when you first came to Hawaii?

A. I don't know when he married, but I saw his wife there.

Q. How long had you been in Hawaii was it before you met Lee Sing? A. About one year.

(Testimony of Lee Chew.)

Q. Did you know Lee Sing when you were living in Palolo? A. No.

Q. Then how did you know that Lee Sing came to Hawaii before you did? A. He said so.

Q. Then, as I understand it, Lee Sing was at Waikiki with his wife when you went there?

A. Yes.

Q. Did they have any children at that time?

A. No, not at that time.

Q. Did Lum Shee, Lee Sing's wife, ever have children in Hawaii? A. Yes.

Q. How many children?

A. One son and one daughter.

Q. Were you living at Waikiki when these children were born? A. No.

Q. Do you know their names?

A. Lee Leong, 23 or 24 now, and Lee Moy, 21 or 22 years old.

Q. When were these children born?

A. K. S. 15 or 16.

Q. How do you know?

A. Because they invited me to be present at a dinner when the boy was one month old.

Q. Where were you living at that time?

A. Maunakea Street.

Q. How many times did you call at Lee Sing's home when you were living at Maunakea Street?

A. Very often, once a week or two or three times a month, for I was buying bananas there.

Q. How did you make these visits?

A. About five or six years.

(Testimony of Lee Chew.)

Q. Then why did you discontinue making your visits?

A. Because I quit my job and then went to Waialua.

Q. Then as I understand it that you went from Palolo to Waikiki, and lived there for a year and two months, and then went to Maunakea Street and lived five or six years, and then you moved to Waialua?

A. Yes.

Q. After you had moved to Waialua did you ever visit Lee Sing at Waikiki? A. No.

Q. Was Lee Sing living at Waikiki when you moved to Waialua? A. Yes.

Q. Is Lee Sing living at Waikiki now?

A. No, he has gone to China.

Q. Do you know when he went to China?

A. About 20 years.

Q. Where were you living when Lee Sing went to China? A. Waialua.

Q. How *long* was Lee Leong when you first saw him? A. 3 or 4 years old.

Q. How many children did Lum Shee have born to her in Hawaii? A. Two.

Q. Did she have any that died? A. No.

Q. Is Lee Leong married? A. I don't know.

Q. Do you think you could identify Lee Leong if you were to see him to-day? A. No.

Q. Have you anything further to say?

(S.) _____

(Testimony of Lee Leong.)

Subscribed and sworn to before me this 14th day of March, A. D. 1913.

(S.) MERLEN J. MOORE,
Immi. and Act. Chinese Inspector.

The foregoing testimony has been translated by me to affiant named therein, and before signing he has acknowledged it to be a correct record.

(S.) CHUCK HOY, Interpreter. [33]

[Testimony of Lee Leong (Recalled).]

Case of LEE LEONG.

Applicant recalled, sworn, testifies:

Intpr. TONG KAU.

Q. What are your names?

A. Lee Leong; no others.

Q. You testified in the matter of your application to land on the 14th instant, did you not?

A. Yes, the other day.

Q. What have you been doing in China?

A. Help my father in his store and carry things to sell.

Q. What has your father in his store?

A. Merchandise and papers goods.

Q. Anything else? A. And pork.

Q. Did you ever work in the pork?

A. I am not a butcher, but I carried pork to sell.

Q. How many children have you?

A. One boy, only.

Q. What is his name? A. Lee Sau Kun.

Q. Give me the date of his birth?

A. 6th month, 24th day, ST. 3 (July 18, 1911).

Q. Do you know a man by the name of Lee Yet?

(Testimony of Lee Leong.)

A. Yes.

Q. When did you see him last?

A. A little over one year ago.

Q. Was he in China then? A. Yes.

Q. Did he visit your house in China on that occasion? A. Yes.

Q. How many times? A. Often.

Q. How long was he in China about a year ago?

A. 6 or 7 months.

Q. Did he see your wife at that time?

A. Yes.

Q. Did he see her very often? A. Yes.

Q. Did he see your boy at that time? A. Yes.

Q. How old was your boy when Lee Yet was in China? A. Not quite one month.

Q. Do you know a man by the name of Lee Wo?

A. Yes.

Q. When did you see him last?

A. About one year ago.

Q. He was in China and in your village at the same time Lee Yet was, was he not? A. Yes.

Q. Did he ever accompany Lee Yet on a visit to your house in China? A. Yes.

Q. And did he see your wife and child in China?

A. Yes.

Q. How long was Lee Wo in your village?

A. Nearly 10 months.

Q. Do you know a man by the name of Lee Keau or Lee Look Hoo? A. No.

Q. He identified you as Lee Leong?

A. Yes, but I did not identify him.

(Testimony of Lee Leong.)

Q. Did you ever see him in China? A. Yes.

Q. When did you see him in China?

A. Two years ago.

Q. Did he visit your house in China two years ago?

A. Yes.

Q. And did he see your wife and child at that time?

A. No.

Q. How long have you known Lee Keau?

A. Over 5 years ago.

Q. Was he in China 5 years ago?

A. I don't remember.

Q. Then why five years ago.

A. He was in China before, I know him before he came to this island.

Q. How old were you when you knew Lee Keau in China? A. A little over 10 years.

Q. Did you ever tell Lee Keau that you were in Hawaii? A. No.

Q. Did you ever tell him that you were born in Hawaii in 1910? A. Yes.

Q. Did you ever tell him that you were born in Hawaii before he came to Hawaii? A. No.

Q. Has your father any brothers or sisters?

A. No.

Q. Did you ever hear of a name of "Lee Pung"?

A. No.

Q. Has your father a brother by that name?

A. No.

Q. Did you ever hear of a man by the name of Lee Ming? A. I don't know.

Q. Did you ever hear of a man by the name of Lee

(Testimony of Lee Leong.)

Mung? A. No.

Q. Have you anything further to say? A. No.

Q. Have you understood the interpreter?

A. Yes.

Q. Are you related to Lee Yet?

A. His father's father is brother to my father's father.

(S.) _____

Witnesses Lee Yet, Lee Wo and Lee Keau taken to detention—[34]

Identification is mutual between witnesses Lee Yet and Lee Wo and applicant. Lee Keau identifies applicant, calling him Lee Leong; applicant cannot identify Lee Keau—does not know his name. Witnesses Lee Chew and Siu Sam do not identify applicant.

Case of Lee Leong, alleged Hawaiian born, Ex. Siberia March 10, 1913.

Honolulu, T. H., March 17, 1913.

This case presents discrepancies and contradictions, which are readily manifest, in regard to material points.

After a careful consideration of the record and testimony, I am of the opinion that there has been a failure to prove that the applicant, Lee Leong was born in Hawaii. He is therefore denied a landing and ordered deported to the country whence he came.

(S.) RICHARD L. HALSEY,

RLH.

Inspector in Charge.

Case of LEE LEONG, as "Siberia," March 10, 1913.

Additional testimony taken by order of the In-

(Testimony of Lee Lau.)

spector in Charge in the investigation of certain affidavits presented by counsel for the applicant, LEE LEONG.

Inspector, MERLEN J. MOORE.

Interpreter, TONG KAU.

[Testimony of Lee Lau.]

Witness LEE LAU sworn, testifies: C. R. No. 10500—not verified.

Q. What are your names?

A. Lee Lau and Lee Koi Yip.

Q. How old are you? A. 30 years old.

Q. Give me the date of your birth?

A. 1st month, 7th day; don't know what year.

Q. Where were you born? A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. 1900.

Q. How old were you at that time?

A. I was 17 years old.

Q. Have you been back since? A. One time.

Q. When?

A. In 1910, I went to China, and returned in 1912.

Q. Do you know what date you returned, what steamer? A. In July last year, S. S. "Korea."

(Record in this office shows that this witness was issued merchant papers form 431; that he departed to China Jan. 24, 1911, as "Tenyo Maru," and arrived here from China by the S. S. "Korea" July 8, 1912 and was landed as a domiciled Chinese merchant July 8, 1912.)

Interpreter CHUCK HOY.

Q. Where did you say you were born?

(Testimony of Lee Lau.)

A. Sun Chin, China.

Q. Do you know the date and the steamer of your arrival here the first time?

A. I don't remember the steamer but I arrived here on the 3d months of K. S. 25 or 26 (1899-1900).

Q. What kind of papers did you have at that time?

A. I do not know. I think it was a traveling paper.

Q. Did you have any papers at all?

A. I was too young at that time, and I don't know.

Q. Were you traveling alone?

A. I followed Lee Choy Tin when he came.

Q. What kind of papers did he have?

A. I don't know.

Q. Is Lee Choy Tin related to you?

A. No, only same family of Lee.

Q. When you arrived here in K. S. 35 or 26 were you held in detention or were you landed from the ship?

A. Went to Quarantine Island.

Q. How long did you stay there? A. One week.

Q. Why were you kept there one week?

A. It used to be the rule.

Q. Was the ship quarantined because the ship had disease on board? A. I don't know.

Q. You were 17 years of age at that time, surely you were old enough to know something?

A. I was from the country and I was [35] brought in the country and I don't know much at that time.

(Note. All Chinese destined to the Hawaiian Is-

(Testimony of Lee Lau.)

lands were examined by Immigration Officers under the Chinese Exclusion Laws arriving after December 1, 1898.)

Q. Did you live in the Sun Chin village from the date of your birth to the time of your coming to Hawaii? A. Yes.

Q. Are you married?

A. Yes, to Lum Shee, 20; nat. feet; living, China; Sun Chin.

Q. Have you any children?

A. One son, Lee Chin; 2 years old.

Q. What is your occupation at this time?

A. Member and work for Hing Lee Chan store, corner Union and Hotel Streets, Honolulu.

Q. What is your object in coming here to-day?

A. Witness for Lee Leong.

Q. Are you related in any way to Lee Leong?

A. No relation.

Q. How old is he? A. 24 or 25 years old.

Q. Are his parents living?

A. Yes, in China, Sun Chin.

Q. Give me their names and about how old they are.

A. Lee Sing and also called Lee Chuck Hing, about 54 or 55 years old; mother Lum Shee; 44 or 45.

Q. What kind of feet has the mother?

A. Bound feet.

Q. Has Lee Leong any brothers or sisters?

A. One sister, Lee Moy; 21 or 22.

Q. Did you ever see his sister?

A. Yes, when she was young.

(Testimony of Lee Lau.)

Q. Did you ever see her in China in 1911?

A. No, she is married.

Q. How long has she been married?

A. I don't know.

Q. Where was applicant born?

A. Waikiki, Honolulu.

Q. How do you know he was born at Waikiki?

A. I used to play with him in China and he told me so.

Q. How old was applicant when you used to play with him?

A. I mean that it was the last time in 1910, and I don't mean it was before that.

Q. Do you mean that you did not play with applicant in China?

A. Yes, I did play with him.

Q. Then what do you mean by saying it was the last time in 1910?

A. I was just acquainted with him at that time.

Q. How old was the applicant when you first saw him? A. 4 or 5 years old.

Q. How is it he was 4 or 5 years old before you saw him?

A. Because he was—he came from Hawaii to China.

Q. How do you know that he came from Hawaii?

A. His parents said so.

Q. Where was Lee Leong when you first saw him?

A. Sun Chin village.

Q. Did you see him about the village, or did you see him when he first came from Hawaii?

(Testimony of Lee Lau.)

A. I first saw him in the street.

Q. Was he alone in the street?

A. Playing with some other children.

Q. Did you stop and talk with him?

A. I did not talk to him, but so someone else in the village told me.

Q. Do you remember who it was told you?

A. Many people.

Q. What did they tell you?

A. Said that Lee Leong was born in Hawaii.

Q. Did Lee Leong ever tell you that he was born in Hawaii?

A. Yes, when I was in China in 1910.

Q. Did Lee Leong ever tell you that he was born in Hawaii prior to your coming here in 1899?

A. No.

Q. Did you ever hear Lee Leong tell anyone that he was born here? A. No.

Q. Did his parents ever tell you before you came here that their son was born in Hawaii?

A. No.

Q. Did you ever hear anyone else say that Lee Leong was born in Hawaii, that is, did you hear them speak of his birth in Hawaii prior to your coming here when you were 17 years old?

A. Yes, some people in the village.

Q. But neither applicant nor his parents told you about applicant's birth in Hawaii prior to your coming here? A. No.

Q. Did you make it your business to inquire where applicant Lee Leong was born?

(Testimony of Lee Lau.)

A. No, but I heard that his parents said so. [36]

Q. As a matter of fact, you never heard the Hawaiian birth of Lee Leong discussed until you returned to China in 1911? A. Yes, that is right.

Q. Then the first time you ever heard of Lee Leong being born in Hawaii was when you returned to China in 1911? A. Yes, that is right.

Q. Did you visit applicant Lee Leong's house in China when you were there in 1911? A. Yes.

Q. Is he married? A. Yes.

Q. Do you know his wife's name? A. No.

Q. Did you ever see her? A. Yes.

Q. Did you visit Lee Leong's house very often?

A. I called at his store very often.

Q. Did you ever visit of applicant's house, his home? A. They lived back of the store.

Q. In the same building? A. Yes.

Q. How many children has applicant's wife?

A. One son.

Q. Do you know his name? A. No.

Q. How old is this boy? A. 2 or 3 years old.

Q. Do you know the name of the store?

A. Ming Lee.

Q. Is applicant the owner of that store?

A. No, his father owns it.

Q. How did it happen that Lee Leong told you that he was born in Hawaii when you were in China on your trip in 1911?

A. He was asking me about Hawaii, and he said he would like to come to Hawaii and said that he was

(Testimony of Lee Lau.)

born here, and he asked me how he could come to Hawaii.

Q. What did you tell him?

A. I told him if he had a Hawaiian birth paper it would be easy for him, but he said he did not have one, and I told him to send word to his cousin to get a paper for him.

Q. And did Lee Leong do that? A. Yes, he did.

Q. Did you tell him that you would get this birth certificate or paper? A. No, I did nothing.

Q. Then as I understand it Lee Leong never mentioned his Hawaiian birth until this occasion?

A. Yes, that is right.

Q. As a matter of fact, you never talked to Lee Leong until you saw him in 1911; is that right?

A. Yes.

Q. Then I understand that the first time you ever saw Lee Leong was in 1911, or when he told you that he was born in Hawaii? A. Yes, that is right.

Q. Then all this testimony about seeing Lee Leong in China when he was about 3 or 4 years old is a mistake?

A. Yes, I did see him, but I never said anything to him.

Q. Do you think you can recognize applicant at this time? A. Yes.

Q. I want to ask you another question, and I want you to think well before you answer, that no mistake will be made. Did you or did you not see applicant prior to 1911 when you visited China?

A. This is the truth; I saw the boy in China, and

(Testimony of Lee Lau.)

when he was in China, and was 3 or 4 years old, but I did not recognize him, and when I was in China 1911, his parents told me that Lee Leong was the boy.

Q. Then you think you saw Lee Leong when he was in China when he was 3 or 4 years old, but you did not recognize him on your return in 1911?

A. That is right.

Q. Did you ever see Lee Leong in Hawaii?

A. No.

Q. Then you don't know of your own knowledge where Lee Leong was born? A. Yes.

Q. He might have been born in some other village in China, and have come to the Sun Chin village to live as far as you know?

A. I only know that his parents told me.

Q. And they never told you until 1911, is that right?

A. They never told me until 1911.

Q. Have you anything further to say? A. No.

(Signed in Chinese.) [37]

Witness Lee Lau taken to detention-room, where he identifies applicant.

Subscribed and sworn to before me this 1st day of April, 1912.

(S.) MERLEN J. MOORE,
Immig. & Act. Chinese Inspector.

The foregoing testimony has been translated by me to affiant by me and before signing he has acknowledged it to be a correct statement and thoroughly understood by him.

(S.) CHUCK HOY, Interpreter.

[Testimony of Lee Lung.]

Witness LEE LUNG, sworn, testifies: C. R. 12826
verified Mar. 41909.

Q. What are your names?

A. Lee Lun and Lee Bak Yip.

Q. How old are you? A. 34 years.

Q. Where were you born?

A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. K. S. 23 (1897) I think.

Q. Do you remember what steamer?

A. "Belgie," 6th months Chinese last part.

Q. Have you been to China since?

A. Once; I think it was in 1910.

Q. What is your occupation?

A. Planting vegetables, member of Hop Wo Ying.

Q. Are you married?

A. Yes, to Lum Shee 21, bound feet, now in China;
never in Hawaii; have one son Lee Tai, 3 years old;
no daughters.

Q. How long did you remain in China when you
were there the last time? A. 9 months.

Q. Did you stay in the Sun Chin village most of
the time? A. Yes, all the time.

Q. What is your object in coming here to-day?

A. Witness for Lee Leong.

Q. Where was he born?

A. Waikiki, Hawaii.

Q. Were you in Hawaii at the time of his birth?

A. No.

Q. How old is Lee Leong?

(Testimony of Lee Lung.)

A. 24 or 25 years old.

Q. How old was Lee Leong when you first saw him?
A. 4 or 5 years old.

Q. And where did you see him at that time?

A. Sun Chin.

Q. Explain to me how it is that you never saw Lee Leong until he was 4 or 5 years of age?

A. Because he was in the Hawaiian Islands.

Q. On what occasion did you see him in Sun Chin village?

A. He came to China from Hawaii with his parents.

Q. Did you see his parents bring him to the Sun Chin village?
A. Yes.

Q. Do you mean that you were in the Sun Chin village and saw the parents of Lee Leong come to the village?
A. Yes.

Q. Did they arrive by boat or how did they come?

A. They came by a small boat.

Q. And were you present when the boat arrived?

A. No, but I saw them pass coming into the village.

Q. Was that the first time you ever saw Lee Leong and his parents?
A. Yes.

Q. You never knew his parents before that time?

A. No.

Q. How do you know that they came from Hawaii?

A. Common knowledge of the people.

Q. Do you know the names of applicant's parents?

A. Lee Sing, Lee Chuck Hing, and mother Lum Shee.

(Testimony of Lee Lung.)

Q. Do you remember ever seeing applicant after his arrival in the Sun Chin village?

A. Yes, very often.

Q. Did you ever talk to him? A. No.

Q. Did you become a friend of the family?

A. Not very well acquainted.

Q. Did you ever visit with applicant's parents at their home when applicant was a small boy?

A. Yes, a few times and at the times when Lee Leong's parents would give raisins which they had brought from Hawaii. [38]

Q. On these visits to Lee Leong's home was the Hawaiian birth of applicant spoken of?

A. Yes, the parents said so.

Q. How old were you when you came to Hawaii?

A. When I was 19 years old.

Q. How old was applicant at that time?

A. (After figuring and counting several minutes.)
About 8 or 9 years old.

Q. About how old were you when you first saw applicant? A. 12 or 13 years old.

Q. Did you visit applicant's home in China in 1910? A. Yes.

Q. Is he married? A. Yes.

Q. Do you know his wife's name?

A. Lum Shee.

Q. Has she any children?

A. I don't know.

Q. Where was applicant living in 1910?

A. Sun Chin village.

Q. Whereabouts in this village?

(Testimony of Lee Lung.)

A. Back of the Ming Lee store.

Q. Did you discuss the place of his birth with applicant at that time?

A. Yes, we were talking together and he was asking how the islands were now for business, and I said they were all right, and he mentioned and said that he was born here, and asked me how he could come here.

Q. Did you tell him how he could do it?

A. I said that I did not know.

Q. Did you tell him anything about getting a Hawaiian birth certificate? A. No.

Q. Did you recognize the Lee Leong you saw in China in 1910 as the same person you saw when a boy 4 or 5 years old in Sun Chin village?

A. No, but I went to his father's store and his father said so.

Q. Then you don't know of your own knowledge whether the boy you saw coming to the Sun Chin village is the same person you saw in China in 1910, do you? A. I don't know.

Q. Did you ever hear, prior to coming to Hawaii, anyone say that Lee Leong was born in Hawaii?

A. Yes, the neighbors said so.

Q. Did Lee Leong's parents tell you that Lee Leong was born in Hawaii?

A. His father said so.

Q. Did his father tell you that before you came to Hawaii? A. No.

Q. As a matter of fact, you never heard where Lee Leong was born prior to your coming to Hawaii?

(Testimony of Lee Lung.)

A. Oh, I heard it before I came to Hawaii.

Q. Did you make it your business to go and inquire where Lee Leong was born?

A. No, someone was talking and I just heard it.

Q. Did you hear it more than once?

A. Four or five times.

Q. Did you ever ask Lee Leong where he was born?

A. No.

Q. Did you ever ask his parents where he was born? A. I asked his father.

Q. What did his father tell you?

A. In Hawaii, that he was born here.

Q. Did he tell you where in Hawaii?

A. Yes, he said it was Waikiki.

Q. How old were you at that time?

A. About 13 years old.

Q. And you remember from that time to this that his father told you that applicant was born at Waikiki? A. Yes.

Q. Was Lee Leong present when his father told you that he was born in Hawaii? A. Yes.

Q. Was applicant's mother present? A. Yes.

Q. Where was it that the father told you this?

A. Lee Sing's house.

Q. How old was applicant at that time?

A. About 4 years old.

Q. Were you in Hawaii when applicant was born at Waikiki? A. No.

Q. Where were you? A. Sun Chin.

Q. Did you ever see applicant in Hawaii?

A. No.

(Testimony of Lee Lung.)

Q. Then you don't know of your own knowledge where applicant was born? Is that right?

A. No, but his parents said so. [39]

Q. Has applicant any brothers or sisters?

A. One sister.

Q. Where was she born? A. Also born here.

Q. Was she taken to China with her parents?

A. Yes.

Q. Did you see her on her arrival in the Sun Chin village? A. Yes.

Q. How old was she at that time?

A. About 2 years old.

Q. As I understood you you are not now in a position to identify the boy who arrived in the Sun Chin village, aged 4 or 5 years as the same person you now know as Lee Leong, the person you saw in China in 1910?

A. No, I did not recognize him, but his father said he was the same boy.

Q. Then all you know about it is that applicant's father told you that he was the same boy?

A. Yes.

Q. Have you anything further to say? A. No.

Subscribed and sworn to (Signed in Chinese) day of April, 1913.

(S.) MERLEN J. MOORE,

Immig. & Act. Chinese Inspector.

The foregoing testimony has been translated to affiant named therein by me, and before signing he

(Testimony of Lee Sau.)

has acknowledged it to be true and correct and understood by him.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Lee Sau.]

Witness LEE SAU called, testified: C. R. #7686
verified 9/9/07.

Witness sworn, testifies:

Q. What are your names?

A. Lee Sau and Lee Gun Ho.

Q. How old are you? A. 38 years old.

Q. Where were you born? A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. 16 years ago.

Q. Whose signature is this appearing here on this affidavit? A. Mine.

Q. Have you been to China since?

A. One time in 1907, and returned one year later.

Q. Are you married?

A. To Ng She; 25; natural feet; now in China, never in Hawaii, one son Lee Choy 4 years old.

Q. Where was Lee Choy born? A. Sun Chin.

Q. What is your occupation?

A. Member and work for Hop Wo Yuen vegetable plantation.

Q. What is your object in coming here today?

A. To be a witness for Lee Leong.

Q. How old is he? A. 25 years old.

Q. Is he married? A. Yes.

Q. Do you know his wife's name?

(Testimony of Lee Sau.)

A. I don't know; only heard he was married.

Q. Have they any children? A. I don't know.

Q. Where was Lee Leong born?

A. Waikiki, Hawaiian Islands.

Q. How do you know that?

A. I was in the Sun Chin village at that time, and the parents brought the family back to the village, and his parents said so.

Q. Has applicant any brother or sisters?

A. One sister, Lee Moy; about 22 years now.

Q. Do you know names of applicant's parents?

A. Lee Sing also Lee Chuck Hing, and mother Lum She.

Q. What kind of feet has Lum She? A. Bound.

Q. Are you a friend of the family? That is, are you well acquainted with the parents of applicant?

A. Yes.

Q. Were you present on the occasion when applicant's parents arrived in the Sun Chin village from Hawaii?

A. Yes, I was present and went to his house.

Q. Do you mean that you went to their house immediately after their arrival?

A. Yes, on the same day.

Q. Did you see the family entering village?

A. Yes.

Q. Did you go out to see them?

A. I saw them a little distance away. [40]

Q. In what manner of conveyance were they brought to the village?

A. They all walked in the village, except Lee

(Testimony of Lee Sau.)

Leong's sister, who was in her mother's arms.

Q. From where did they walk?

A. From the sea beach.

Q. How far is the sea beach from the village?

A. Several hundred feet.

Q. How were they brought to the sea beach?

A. By a Chinese boat.

Q. Did they tell you at that time that they had just arrived from Hawaii? A. Yes.

Q. How old was applicant at that time?

A. Four years old.

Q. How old were you when you first came to Hawaii? A. 21 years old.

Q. Did you see applicant in the village very often after his arrival there? A. Yes, very often.

Q. Was it your custom to talk with him when you saw him?

A. Yes, and I would often teach him, and the children used to call him Hawaiian Baby.

Q. And when you were talking to him did you ever mention Hawaii to him? A. No.

Q. Did he ever tell you that he was born in Hawaii? A. Yes.

Q. Prior to your coming to Hawaii did Lee Leong ever tell you that he was born in Hawaii? A. Yes.

Q. How old was Lee Leong when he told you about his birth? A. 7 or 8 years old.

Q. Did he tell you that he was born in Hawaii more than once? A. Yes, plenty of times.

Q. Prior to your coming to Hawaii did applicant's parents tell you that Lee Leong was born in Hawaii?

(Testimony of Lee Sau.)

A. Yes.

Q. Was applicant present on those occasions?

A. I did not notice.

Q. When you were teaching applicant did you ever ask him anything about Hawaii?

A. No, I only asked him where he was born and he said Hawaii?

Q. How old was applicant when you came to Hawaii? A. About 8 years old.

Q. When you returned to Hawaii in 1908, did you recognize applicant as the same person you saw return from Hawaii? A. Yes.

(Records of this office show that Lee Sau, witness, was issued return permit on July 8, 1908, and that he returned from China on the "Korea" Aug. 8, 1908.)

Q. Did you see Lee Leong in China in 1907?

A. Yes.

Q. Did you discuss his Hawaiian birth at that time? A. Yes.

Q. What did he tell you?

A. He asked about the Hawaiian Islands were, and that he would like to return.

Q. Did he ask you anything about getting papers, or anything of that kind?

A. Yes, he asked me about people who were born in Hawaii but who did not have papers and I told him that if he was born he could return.

Q. Do you think you are able to identify Lee Leong now? A. Yes.

(Testimony of Lee Sau.)

Q. Were you in Hawaii when Lee Leong was born here? A. No.

Q. Then you don't know of your own knowledge whether Lee Leong was born here or not, do you?

A. I heard about it.

Q. But you don't know of your own knowledge where Lee Leong was born?

A. No, I don't know but his parents said so.

Q. How do you know but what Lee Leong was born in some distant village in China, and returned to Sun Chin?

A. I only know what his parents said.

Q. Have you anything further to say? A. No.

(Signed in Chinese.)

Subscribed and sworn to before me this 1st day of April, 1913.

(S.) MERLEN J. MOORE,

Immig. & Act. Chinese Inspector.

The foregoing testimony has been translated by me to affiant named therein and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,

Interpreter.

Witness Lee Sau taken to detention quarters and identifies applicant. [41]

Q. (To applicant.) Who is this person (indicating Lee Sau)? A. I don't know.

Q. Do you know his name? A. No.

Q. Did you ever see him before?

A. It seems to me that I saw him in the village, but I don't know.

[Testimony of Lee King.]

Witness LEE KING, sworn, testifies: C. R. D.
King, #7904; Verified Oct. 18, 1909.

Q. What are your names?

A. Lee King and Lee Young Hoo.

Q. How old are you? A. 34 years old.

Q. Where were you born?

A. Sun Chin village, China.

Q. When did you first come to Hawaii?

A. When I was 12 years old.

Q. Have you been to China since?

A. Yes, once, 1909.

Q. How long did you remain in China on that trip?

A. Returned after a year.

Q. Did you stay in the Sun Chun village all the
time you were in China? A. Most of the time.

Q. Are you married?

A. Yes; to Lum Shee; 25; now loosed feet, form-
erly bound; no children.

Q. What is your occupation?

A. Tailor, in my brother's store, On Tai Lee store,
Honolulu.

Q. How long have you been in that business?

A. About 10 years.

Q. What is your object in coming here to-day?

A. Come to be a witness for Lee Leong.

Q. How old is he?

A. About 24 or 25 years old.

Q. Are you acquainted with his parents?

A. Yes.

Q. Do you know their names?

(Testimony of Lee King.)

A. Lee Sing, Lee Chuck Hing, and mother, Lum Shee.

Q. What kind of feet has Lum Shee?

A. Bound feet.

Q. Do you remember the year when you came to Hawaii?

A. It was 22 years ago. I was a small boy then, and I don't remember the year.

Q. Has Lee Leong any brothers or sisters?

A. One sister, Lee Moy, about 21 or 22.

Q. Where was Lee Leong born?

A. Waikiki, Honolulu.

Q. How do you know that?

A. I first saw him when I first arrived in Honolulu, when I visited his parents; he was about 3 or 4 years old at that time.

Q. What was his father doing at Waikiki?

A. Planting bananas.

Q. How many children did Lum Shee have at that time? A. A son and a daughter.

Q. Where did you live when you came to Hawaii?

A. Maunakea Street, Honolulu.

Q. What was the occasion of your visit to Lee Sing at Waikiki?

A. He is my family relation, and from the same village.

Q. Is there a blood relation?

A. No; perhaps so a way back.

Q. Was it customary for you to visit Lee Sing and Lum Shee at Waikiki, or did you visit *one* them but this once?

(Testimony of Lee King.)

A. Once in a while, whenever I had spare time.

Q. How long did you continue to make these visits?

A. About a year.

Q. And why did you not continue to visit Lee Sing?

A. They went to China.

Q. How old was Lee Moy, or Lee Leong's sister when you came to Hawaii?

A. One or two years old.

Q. Was she old enough to play about the yard, or was she in her mother's arms? ..

A. She was just begining to walk.

Q. Then she was about 2 years old?

A. Yes, 2 years old.

Q. You say you came to Hawaii 22 years ago; now, if Lee Leong was 3 or 4 years old, then, and his sister Lee Moy was 2 years old, and they remained in Hawaii about one year after you came, it would appear that Lee Leong was about 4 or 5 years old when he was taken to China?

A. Yes, Lee Leong was about 4 years old when he was taken to China, and his sister about 2 years old.

[42]

Q. But you said they were that old when you first came here?

A. I didn't say exactly; about that age.

Q. Whereabouts at Waikiki did Lee Sing live?

A. Kong Sing banana plantation.

Q. You came here 22 years ago, and saw Lee Leong at Waikiki, and for that reason you are of the opinion that he was born in Hawaii?

A. Yes, his parents were here, and sister.

(Testimony of Lee King.)

Q. Did you know these people in China?

A. Yes.

Q. Did you ever see them in the Sun Chin village?

A. I may have, but I don't know, I was so young.

Q. Did you ever see Lee Sing or Lum Shee prior to your coming to Hawaii, in China?

A. I don't remember.

Q. They claim to have come from your village?

A. Yes.

Q. Then how do you know but what these children were born in China, and later brought to Hawaii by their parents?

A. Lee Sing said they were born here.

Q. When did he tell you that?

A. When I first arrived here.

Q. Do you know why Lee Sing went to China?

A. No.

Q. Has he ever returned? A. No.

Q. Did you see Lee Sing in China in 1909?

A. Yes.

Q. What was he doing at that time?

A. He had a store of the name of Ming Lee and sometimes he would go out in the field and plant vegetables.

Q. Where did his family live?

A. Lived back of the store.

Q. How many children has Lum Shee, Lee Sing's wife, at the present time? A. Two.

Q. Did you see Lee Moy in China in 1909?

A. Yes, I saw Lum Shee and Lee Moy.

Q. Did you see applicant Lee Leong? A. Yes.

(Testimony of Lee King.)

Q. Did you talk to him? A. Yes.

Q. Did he ever tell you that he was born in Hawaii?

A. Yes.

Q. What did he tell you?

A. He asked me how the Islands were, and that he would like to return.

Q. Did he ask you how he could return?

A. He said he was going to write to his cousin, Lee Yet, to get a paper for his return.

Q. Did you recognize Lee Leong as being the same boy you saw on your first arrival in Hawaii, the boy you saw at Waikiki, 22 years ago?

A. No, I did not recognize him, but I recognized his father, and talked to his father, and his father asked me if I recognized his son, who was born at Waikiki.

Q. And when his father asked you if you recognized his son, what did you tell him?

A. "Is that so? I do not recognize him; he has grown."

Q. Then all you have is the father's word that Lee Leong is the boy? A. Yes.

Q. If you were unable to identify him in 1909, as the boy you saw at Waikiki, 22 years ago, how do you expect to identify him to-day?

A. It was so long a time I could not.

Q. If you could not identify him, how do you expect to do so now?

A. His father told me in 1909.

Q. As I understand you, you are in a position to-day to identify Lee Leong as the boy you saw in China in 1909? A. Yes.

(Testimony of Lee King.)

Q. But you are not in position to say that Lee Leong is the same person you saw at Waikiki 22 years ago?

A. I can say that his parents said so.

Q. When was the first time Lee Leong said anything to you about being born in Hawaii?

A. In 1909.

Q. You had never spoken to *you* before that, had you? A. No. [43]

Q. Are you quite sure that the first time you ever saw Lee Leong was not in China in 1909?

A. No; I am sure I saw him at Waikiki.

Q. What was Lee Leong doing in China in 1909?

A. In his father's store.

Q. Was he married then?

A. He was married a *short after* I arrived in the Sun Chin village.

Q. Do you know when you arrived here?

A. 9th or 10th month, Chinese.

Q. How old was applicant in 1909?

A. 21 or 22.

Q. Have you anything further to say?

A. No.

(Signed in Chinese.)

(Witness taken to detention quarters; identification mutual.)

Subscribed and sworn to before me this 1st day of April, 1913.

(S.) MERLEN J. MOORE,
Immig. & Act. Chinese Inspector.

The foregoing testimony has been translated by me

(Testimony of Lee Yau.)

to affiant named therein, and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

[Testimony of Lee Yau.]

Witness LEE YAU, sworn, testifies: C. R. 7592, not verified.

Q. What are your names?

A. Lee Yau and Lee Arn Hoo.

Q. How old are you? A. 34.

Q. Where were you born? A. Sun Chin, China.

Q. When did you first come to Hawaii?

A. About 18 years ago.

Q. Have you been back since?

A. Yes, once; in 1910, and returned in 1911.

(Applicant was admitted here as a domiciled merchant S/S "Manchuria" April 28, 1911.)

Q. Are you married?

A. Yes, to Wong Shee; 21; bound feet; living in China.

Q. Have you any children?

A. One daughter; don't know her name; born after I left China.

Q. What is your occupation?

A. Member and work for L. Kwai Yau Co., Honolulu.

Q. What is your object in coming here to-day?

A. Witness for Lee Leong.

Q. Do you know his parents? A. Yes.

Q. Give me their names.

A. Lee Sing and Lee Chuck Hing, and mother, Lum Shee.

(Testimony of Lee Yau.)

Q. What kind of feet has she? A. Bound feet.

Q. Has Lee Leong brothers or sisters?

A. One sister; don't know her name.

Q. How old is she? A. I don't know.

Q. Is she older than Lee Leong?

A. No, younger.

Q. Where was Lee Leong born?

A. His mother said that he was born in Hawaiian Islands.

Q. Did you ever see either of Lee Leong's parents in Hawaii? A. No.

Q. Did you ever see Lee Leong in Hawaii?

A. No, but in China.

Q. When did you see Lee Leong in China?

A. I saw Lee Leong before I came to Hawaii, and I saw him again when I was in China in 1910.

Q. How old were you when you first came to Hawaii? A. When I was about 15 or 16.

Q. And you say you saw applicant in China before you came here? A. Yes.

Q. How old was applicant when you came to Hawaii? A. 4 or 5 years old.

Q. Were you acquainted with applicant's parents in China, before you came here? A. Yes.

Q. Did you visit their house in China?

A. Yes, often.

Q. Did you visit applicant's parents in China from your early boyhood? A. Yes. [44]

Q. From the time you can remember, from the time you were a small boy? A. Yes.

Q. Then, do I understand that from your earliest

(Testimony of Lee Yau.)

recollection you remember Lee Sing and Lum Shee living in the Sun Chin village? A. Yes.

Q. Did you know Lee Leong's parents before Lee Leong was born? A. No.

Q. How old is Lee Leong?

A. 24 or 25 years old.

Q. Then he is younger than you are? A. Yes.

Q. You claim to be 34 years old, and you must have been nine or ten years old when Lee Leong was born?

A. Yes.

Q. And you claim to have known applicant's parents in China from your early boyhood?

A. I know that he was born in the Hawaiian Islands.

Q. Where were you living when Lee Leong was born? A. Sun Chin.

Q. How could Lee Leong be born in Hawaii when his parents were in China?

A. At that time they all went to China.

Q. How old was Lee Leong when his parents took him to China? A. About 4 years old.

Q. How long did you know Lee Leong and his parents in China before you came to Hawaii?

A. 4 or 5 years.

Q. Then applicant must have been 8 or 9 years old when you came to Hawaii? A. Yes.

Q. If you were in China when Lee Leong was born, how do you know that he was born in Hawaii?

A. The applicant's mother told me so.

Q. Did Lee Leong ever tell you that he was born in Hawaii?

(Testimony of Lee Yau.)

A. Not at that time, but he was talking to me in 1910.

Q. What did Lee Leong tell you in 1910?

A. I went to visit his store; and he said that he was born in Hawaiian Islands, and that he would like to return.

Q. Did he ask you how he could return?

A. He just said that he was born here.

Q. Did Lee Leong, prior to your coming to Hawaii ever tell you that he was born here? A. No.

Q. Did you ever talk to Lee Leong prior to your coming here? A. Yes.

Q. Did his parents ever tell you that he was born here? A. Yes.

Q. When? A. When I was in China last.

Q. Did they ever tell you before you came to Hawaii? A. No.

Q. Then, I understand you, the first time you ever heard of Lee Leong being born in Hawaii was in 1910, when you visited the Sun Chin village?

A. Not only that time, but before.

Q. If his parents told you, and if Lee Leong never told you, how did you hear it?

A. I heard that his parents said so.

Q. The truth of it is that you never gave the subject of the birth of Lee Leong any thought until you were in China in 1910?

A. Yes, his parents told me before I came to Hawaii

Q. You just stated that his parents never told you before you came to Hawaii; now you say they did?

(Testimony of Lee Yau.)

A. Yes, they told me.

Q. Did the applicant ever tell you before you came here? A. No.

Q. Do you remember the arrival of the family of Lee Sing in the Sun Chin village?

A. No; I never saw them until a few days after they came.

Q. How do you know that they came from Hawaii?

A. Lee Leong's parents said so.

Q. How is it that you seem to be so well acquainted with Lee Leong and his parents, and you do not know anything about his sister?

A. I never talked to her.

Q. Are you in a position to say *that* your own knowledge that Lee Leong was born in Hawaii?

A. No, it all depends on his parents.

Q. Then, if his parents had told you that Lee Leong was born in Mexico or some other place you would believe that he was? A. Yes. [45]

Q. Did you recognize Lee Leong in 1910 as the boy you used to know in Sun Chin, before you came to Hawaii? A. No, I did not recognize him.

Q. Did his parents tell you that he was the boy?

A. Yes.

Q. If you were not able to recognize him in 1910 as the boy you saw in the Sun Chin village prior to your coming to Hawaii, how do you expect to recognize him now?

A. I believe that his parents said.

Q. Have you anything further to say? A. No.

(Signed in Chinese.)

(Testimony of Lee Leong.)

Subscribed and sworn to before me this 1st day of April, 1913.

(S.) MERLEN J. MOORE,
Immig. & Chinese Inspector.

The foregoing testimony has been translated by me to affiant named therein, and before signing he has acknowledged it to be correct.

(S.) CHUCK HOY,
Interpreter.

Witness Lee Lau taken to the detention quarters; witness points out applicant from a group of Chinese, and applicant calls witness by name, and says that he saw witness in China several years ago.

[Testimony of Lee Leong (Recalled).]

Applicant recalled, sworn, testifies:

Q. What are your names?

A. Lee Leong and Lee Ying Hoo.

Q. Whereabouts in the Sun Chin village have you been living? A. Center of the village.

Q. How far from your father's store?

A. Right in the store, back of the store.

Q. How old were you when you first learned that you were born in Hawaii?

A. When I was 12 or 13 years old.

Q. Prior to that time was it customary for you to talk with different people about being born in Hawaii? A. No.

Q. Do you know a man by the name of Lee Sau?

A. No.

Q. Do you know a man by the name of Lee Gun Hoo? A. No.

(Testimony of Lee Leong.)

Q. Is the Sun Chin village near the sea?

A. Yes.

Q. How far away from the sea?

A. One or two hundred feet.

Q. Have you anything further to say? A. No.

Q. Have you understood the Interpreter?

A. Yes.

(Signed in Chinese.)

[Decision of Inspector, Dated April 2, 1913.]

UNITED STATES IMMIGRATION SERVICE,
PORT OF HONOLULU, T. H.

April 2nd, 1913.

Case of Lee Leong:

After consideration of the record made in regard to new evidence set forth in the brief on appeal I see no reason to change the opinion already formed.

(S.) RICHARD L. HALSEY,

Inspector in Charge. [46]

**[Petitioner's Exhibit "B"—Certificate of Birth of
Lee Leong.]**

TERRITORY OF HAWAII.

OFFICE OF THE SECRETARY.

CERTIFICATE OF HAWAIIAN BIRTH.

TO ALL TO WHOM THESE PRESENTS SHALL
COME, GREETING:

THIS IS TO CERTIFY, that Lee Yet, now residing at Honolulu, Oahu, T. H., whose signature is attached hereto, has filed application No. 841 for a certificate of Hawaiian Birth for LEE LEONG.

And that it appears from said application, its ac-

companying affidavits, and the evidence of witnesses examined that said LEE LEONG was born in the Hawaiian Islands on the 21st day of January, A. D. 1888, and that the photograph attached to this certificate is a good likeness of him at this time.

IN TESTIMONY WHEREOF, the Secretary of the Territory of Hawaii has hereunto subscribed his name and caused the great seal of said Territory to be affixed.

Done in Honolulu, this 21st day of November, A. D. 1912.

[Seal] (Signed) E. A. MOTT-SMITH,
Secretary of Hawaii.

(Photograph.) [47]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

**Order [Directing Issuance of Writ of Habeas
Corpus, etc.].**

Upon motion of Geo. S. Curry and Andrews & Quarles, counsel for the petitioner above named, and upon having heard read the within petition for a writ of habeas corpus, and upon the showing made it appears to me that a writ of habeas corpus should issue, as prayed for in the within petition, and I do hereby order and direct that a writ of habeas corpus be forthwith issued out of this Court directing and commanding Richard L. Halsey, United States Immigration Inspector in charge at the Port of Honolulu, Terri-

tory of Hawaii, to have and produce the body of the within named petitioner before this Court on Wednesday, the 21st day of May, A. D. 1913, at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard.

And I do hereby further order and direct that a copy of this petition and writ be forthwith served upon Robert W. Breckons, United States District Attorney for the District and Territory of Hawaii, or his Deputy.

(Sgd.) CHAS. F. CLEMONS,
Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

Dated Honolulu, Hawaii, May 16th, 1913. [48]

**[Writ of Habeas Corpus and Marshal's Return
Thereon.]**

The President of the United States of America to
Richard L. Halsey, Esquire, United States Im-
migration Inspector in Charge, at the Port of
Honolulu, Territory of Hawaii:

We command you that the body of LEE LEONG by you detained and imprisoned, as is charged, you have before our District Court of the United States in and for the District and Territory of Hawaii, on Wednesday, the 21 day of May, A. D. 1913, at the hour of 10 o'clock in the forenoon of said day, together with the cause of the detention of the said LEE LEONG, to then and there undergo and receive what our said Court shall consider concerning him in this behalf, and have you then and there this writ with your doings thereon, and you, EUGENE R.

HENDRY, United States Marshal in and for the District and Territory of Hawaii, or your deputy, are hereby directed and commanded to forthwith serve this writ.

Witness the Honorable SANFORD B. DOLE and CHARLES F. CLEMONS, Judges of the District Court of the United States in and for the District and Territory of Hawaii, this 16 day of May, A. D. 1913.

[Seal]

A. E. MURPHY,

Clerk of the District Court of the United States in and for the District and Territory of Hawaii.

By (Sgd.) F. L. Davis,

Deputy U. S. Marshal's Office.

MARSHAL'S RETURN.

The within Petition, Order and Writ of Habeas Corpus was received on the 16th day of May, A. D. 1913, and returned as executed this 17th day of May, A. D. 1913, by hand upon Richard L. Halsey, U. S. Immigration Inspector for the Port of Honolulu and C. C. Bitting, Asst. U. S. District Attorney, by exhibiting to each of them the original Petition, Order and Writ of Habeas Corpus and handing to and leaving with each of them a certified copy of same.

E. R. HENDRY,

U. S. Marshal.

By (Sgd.) H. H. Holt,

Chief Office Deputy.

[Endorsed]: No. 57. (Title of Court and Cause.) Petition Order and Writ. Filed May 16, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [49]

[Order Continuing Hearing on Return to Writ of Habeas Corpus to May 27, 1913, etc.]

From the Minutes of the United States District Court, Vol. 8, Page 519, Wednesday, May 21, 1913.

[Title of Court and Cause.]

On this day came the above petitioner in person and with his counsel, Messrs. George S. Curry and R. P. Quarles, and also came the respondent herein, Richard L. Halsey, in person and with Mr. C. C. Bitting, Assistant United States District Attorney, this being the return day herein. Thereupon, on motion of Mr. Bitting and consent of Mr. Curry and Mr. Quarles, it was by the Court ordered that this cause be continued to May 27th, 1913, at 9 o'clock A. M., for hearing on Return to Writ. It was also stipulated by counsel for the respective parties, that the production of the petitioner be waived at all times pending the final determination of this cause. [50]

[Return of Immigration Inspector to Writ of Habeas Corpus.]

In the United States District Court in and for the Territory of Hawaii.

In the Matter of the Application of LEE LEONG for a Writ of Habeas Corpus.

Return of Richard L. Halsey, United States Immigration Inspector in Charge at the Port of Honolulu, Territory of Hawaii, to the Writ of Habeas Corpus heretofore, on the 16th day of

May, A. D. 1913, issued by the Honorable CHARLES F. CLEMONS, One of the Judges of the Above-entitled Court.

And by way of return to the said order and writ herein issued, your respondent demurs to said petition, and for grounds of demurrer says:

First. That said petition does not state facts sufficient to entitle the petitioner to the relief in his said petition prayed for.

Second. That the said petition and the alleged facts therein stated do not show the citizenship, or right to citizenship, of the said LEE LEONG in the United States of America or and to the Territory of Hawaii within the jurisdiction of this Court. If the allegations thereof are true which respondent does not admit—that said petition shows upon its face that said petitioner was or is the son of Chinese parents among the class of excluded aliens denied entrance into the United States, and that if either the said petitioner or his parents were ever entitled to entrance into and residence in the United States, the same has long since been abandoned.

Third. And by way of further return, your respondent denies [51] that petitioner was born at Waikiki, in the city and county of Honolulu, on the Island of Oahu, in the Territory of Hawaii, on or about the time stated in paragraph one of his said petition, or at any other time at said place, and he further says that, while adhering to said denial, even if said petitioner was so born; by acts of his parents whatever, if any, citizenship either the parents of said petitioner or the petitioner himself might have

acquired in the then Kingdom of Hawaii, were surrendered, abrogated and entirely of naught, in so far as this proceeding is concerned.

Fourth. That said petition shows that since about the year 1892, petitioner himself has resided with his parents in a certain village in the petition named, and that said parents have neither claimed nor exercised since said time any right of citizenship, entrance or residence in either the Kingdom, Republic or Territory of Hawaii.

Fifth. As to paragraph three of said petition, your respondent neither admits nor denies the allegations thereof, and asks that the petitioner may be put upon his proof of the same.

Sixth. Respondent admits that upon the arrival at the Port of Honolulu aforesaid, and on or about the time stated, the petitioner was taken in charge by the immigration officers of the United States of America, and was afterwards conveyed to the United States Immigration Station; but denies that he is or was or ever has been unjustly or without warrant or authority of law, or by any other way, imprisoned and restrained of his liberty by your respondent; but admits his official position as stated in said paragraph; and that the said Richard L. Halsey, respondent herein, says,—neither asserting nor denying that said petitioner is a Chinese laborer,—that said petitioner from his own showing was not entitled to land in the United States, or in any port thereof. Furthermore, the respondent says that at the time mentioned in said petition, the said petitioner was given a fair, impartial and unrestricted hearing, to

determine whether or not [52] he was entitled to land at the Port of Honolulu, in the said United States of America, or at any other port of the said United States within the jurisdiction of this Court; and that the decision of said Inspector, your respondent herein, upon said hearing, together with the decision of the Secretary of Labor, is made a part of the Inspector's return herein; and that said decision, appearing among the exhibits of the Petitioner herein, will show that there was such a hearing as is contemplated by law, accorded the petitioner; and the said decision of the said Inspector was affirmed on the 12th day of May, A. D. 1913, by the Acting Secretary of Labor.

That all of the rest and other of the allegations and averments in said paragraph of said petition are merely conclusions of law.

Seventh. That the petitioner was accorded such a hearing as was fair and impartial, as will be shown by the exhibits attached to, and the allegations of the petitioner's complaint herein.

Eighth. That a full, true and complete hearing was allowed the said petitioner, as required by law; that after due consideration, it was determined by the authorities invested by law with such determination, that the said petitioner was not entitled to land within the said United States. That subsequent to such determination, and before final affirmation, upon the request of petitioner, and his attorney, the matter was reopened for further consideration and evidence submitted thereon; and that thereafter the judgment and determination of the Inspec-

tor in Charge was made and rendered; from which an appeal was taken, and which decision was sustained and affirmed by the Secretary of Labor, and the determination upon which appeal was and is by law final and conclusive.

That this Court, nor any Judge thereof, by reason of the premises, has a right or jurisdiction to inquire further into said proceeding. [53]

WHEREFORE, your respondent prays that the writ herein issued may be discharged, and the respondent may recover his costs herein.

(Sgd.) RICHARD L. HALSEY,

Inspector in Charge.

(Sgd.) C. C. BITTING,

Assistant U. S. Attorney for Respondent.

United States of America,
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn according to law, deposes and says that he is the Richard L. Halsey who has made the return to the writ of habeas corpus in the above-entitled cause; that he has read the said return, and knows the contents thereof, and that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 22d day of May, A. D. 1913.

[Seal]

(Sgd.) WM. L. ROSA,

Deputy Clerk United States District Court, Territory of Hawaii.

CABLEGRAM.

"VIA COMMERCIAL PACIFIC."

Received at 7:40 A. M. ART.

16 USG WASHINGTON DC 6

IMMIGRATION HONOLULU. May 12 1913

DEDICANT LEE LEONG

KEEFE

Bureau code, Bureau Circular No. 17, as amended March 18, 1912. DEDICANT—Acting Secretary has affirmed excluding decision board and directs deportation; or (in Chinese cases), Acting Secretary has affirmed your excluding decision case—

Attached to return by amendment June 14, 1913.

(Sgd.) C. F. C., Judge. [54]

[Endorsed]: No. 57. Title of Court and Cause. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Dep-Return of Richard L. Halsey. Filed May 22, 1913. uty. [55]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG, for
a Writ of Habeas Corpus.

Exceptions to Return and Motion to Discharge.

Comes now the petitioner, by his attorneys, George S. Curry, and Andrews & Quarles, and excepts to the return of the respondent, Richard L. Halsey, Inspector in Charge, and moves that the petitioner be ordered discharged from custody of said respondent, upon the grounds and for the reasons following, to wit:

The said return is insufficient as a whole, and does not state any cause for detention of the petitioner by the said respondent.

The first paragraph of said return purports to be a demurrer to the petition, and does not respond to the writ issued, and is improper and insufficient in that it attacks the petition which has become *functus*, the said petition, and its sufficiency having been passed on by one of the Judges of the above-entitled Court, held sufficient and the writ ordered issued, and the respondent cannot go back of said writ but must respond thereto, and said paragraph is a contempt of the order and authority of the said Judge and of the said Court.

The second paragraph of said return is, in effect, an attempt to demur in part to the said petition, without admitting the facts therein stated, but attempting to deny some of the said facts, and an attempt to plead matter in avoidance of the facts [56] stated in the said petition, improper, inadmissible and in contempt of Court.

The third paragraph of said return is insufficient and improper in that it is an attempt to deny in part allegations in said *functus* petition, and an attempt, in part, to plead new matter in avoidance of the allegations of said *functus* petition, and does not respond to the commands of said writ by stating the cause of detention of the prisoner together with the proceedings wherein he is detained, as required by law.

The fourth paragraph of the said return is improper and insufficient in that it does not state the cause of detention of the petitioner by respondent,

but attempts to allege new matter in avoidance which is not pertinent, and is argumentative in that it attempts to show why a native-born citizen of Hawaii should be held to have lost his citizenship.

The fifth paragraph of said return does not state any cause for the detention of the petitioner by the respondent, is improper and insufficient in that it is in the nature of an answer to a bill in equity, neither affirming nor denying, but calling for proof by petitioner of the allegations of paragraph three of his said *functus* petition; and is not part of the return to said writ recognized by law.

The sixth paragraph of said return does not state any cause of detention of the petitioner by said respondent, and shows that the petitioner is not detained by the said respondent; and, further, said paragraph is argumentative and in the nature of a demurrer to the said *functus* petition and questions the sufficiency of the same, and questions the discretion of the Judge of this court issuing the writ herein and treating the action of the said Judge with contempt, and does not respond to the writ as required by law. [57]

The seventh paragraph of said return does not respond to the said writ, does not show any cause for detaining the prisoner by the respondent, states mere conclusions, questions the sufficiency of the petition after it has been passed upon and held sufficient, and is wholly insufficient, in law.

The eighth paragraph of the said return is wholly insufficient in that it states mere conclusions, and shows that the petitioner is entitled to his discharge;

does not state any legal or other cause for the detention of the petitioner by the respondent, and does not respond to the writ by showing the proceedings under which the petitioner is detained by the respondent.

The said return, as a whole, is contradictory and insufficient, states conclusions of law, and does not show any cause, legal or otherwise, for detaining the petitioner by the respondent, and does not show the proceedings under which the petitioner is detained, if detained at all.

WHEREFORE, petitioner prays that this his exceptions to the said return of the respondent herein be sustained, and that he be discharged from custody.

(Sgd.) LEE LEONG,
Petitioner.

(Sgd.) GEO. S. CURRY and
ANDREWS & QUARLES,
His Attorneys.

(Sgd.) GEO. S. CURRY and
ANDREWS & QUARLES,
Attorneys for Petitioner.

May 26, 1913.

[Endorsed]: No. 57. (Title of Court and Cause.)
Exceptions to Return and Motion to Discharge.
Filed at 11:50 o'clock A. M. May 26, 1913. A. E.
Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy
Clerk. [58]

[Order Continuing Hearing on Return to Writ of Habeas Corpus, to May 28, 1913.]

From the Minutes of the United States District Court, Vol. 8, Page 524, Tuesday, May 27th, 1913.

[Title of Court and Cause.]

On this day came the above petitioner in person and with his counsel, Mr. George S. Curry and Mr. L. Andrews, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent herein, Richard L. Halsey, and this cause was called for hearing on the Return to the Writ herein. Thereupon, on motion of Mr. Bitting and consent of Mr. Curry and Mr. Andrews, it was by the Court ordered that this cause be continued to May 28, 1913, at 2 o'clock P. M., for further hearing on said Return to the Writ herein. [59]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of LEE LEONG, for a Writ of Habeas Corpus.

Motion [to Strike Exceptions to Return and Motion to Discharge].

Comes now Richard L. Halsey, Inspector in Charge, and moves the Court that the alleged pleading heretofore on the 26th day of May, A. D. 1913, filed in this court and cause, and entitled, "EXCEPTIONS TO RETURN AND MOTION TO DISCHARGE," be stricken from the files for the following reasons:

1. That the same is scandalous.
2. That the same is unintelligible.
3. That the same attempts to pass judgment upon matters which are exclusively within the cognizance of the Court and which matters only upon the proper presentation the Court has right to determine.

RICHARD L. HALSEY,

Inspector in Charge.

By (Sgd.) C. C. BITTING,

Assistant United States Attorney.

Dated this 27th day of May, A. D. 1913.

[Endorsed]: No. 57. (Title of Court and Cause.)
Motion. Filed May 27, 1913. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [60]

**[Proceedings on Hearing on Return to Writ—May
28, 1913.]**

From the Minutes of the United States District
Court, Vol. 8, Page 525, Wednesday, May 28th,
1913.

[Title of Court and Cause.]

On this day came Mr. George S. Curry and Mr. R. P. Quarles, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent herein, Richard L. Halsey, and this cause was called for hearing on the Return to the Writ herein. Thereupon argument having been had by respective counsel and the time for adjournment having arrived, it was by the Court ordered that this cause be continued

to May 29, 1913, at 2 o'clock P. M., for further hearing on said return. [61]

[Proceedings on Hearing on Return to Writ—May 29, 1913.]

From the Minutes of the United States District Court, Vol. 8, Page 527, Thursday, May 29, 1913.

[Title of Court and Cause.]

On this day came the above petitioner, in person and with his counsel, Mr. George S. Curry, Mr. L. Andrews and Mr. R. P. Quarles, and also came Mr. Richard L. Halsey, the respondent herein in person and with Mr. C. C. Bitting, Assistant United States District Attorney, and this cause was called for further hearing. Thereupon due argument having been had herein, it was by the Court ordered that this cause be continued to May 31, 1913, at 9 o'clock A. M., for further hearing. [62]

[Proceedings on Hearing on Return to Writ—May 31, 1913.]

From the Minutes of the United States District Court, Vol. 8, Page 528, Saturday, May 31, 1913.

[Title of Court and Cause.]

On this day came the above petitioner in person and with his counsel, Mr. George S. Curry and Mr. L. Andrews, and also came Mr. C. C. Bitting, Assistant United States District Attorney on behalf of the respondent herein, Richard L. Halsey, and this cause was called for further hearing. Thereupon and

after further argument had been had on said petition, it was by the Court ordered that this case be continued to June 2, 1913, at 9 o'clock A. M., for decision.
[63]

Order Denying Petition, Discharging Writ and Continuance for Hearing on Motion for the Fixing of Bail Pending Appeal.

From the Minutes of the United States District Court, Vol. 8, Page 530, Monday, June 2, 1913.

[Title of Court and Cause.]

On this day came the above petitioner in person and with his counsel, Mr. George S. Curry, Mr. L. Andrews and Mr. R. P. Quarles, and also came the respondent herein, Richard L. Halsey, in person and with Mr. C. C. Bitting, Assistant United States District Attorney, and this cause was called for further hearing. Thereupon further argument having been had herein by respective counsel, the Court rendered and filed its decision, discharging the said Writ and remanding the petitioner to the custody of the respondent. Thereafter, upon motion of Mr. Curry for the fixing of bail herein pending appeal, argument was had thereon and the said case was continued to June 3, 1913, at 9:30 o'clock A. M., for further hearing on said motion. [64]

**Order of Continuance for Hearing on Motion for Bail
Pending Appeal.**

From the Minutes of the United States District
Court, Vol. 8, Page 531, Tuesday, June 3, 1913.

[Title of Court and Cause.]

On this day came Mr. George S. Curry and Mr. R. P. Quarles, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent herein, Richard L. Halsey, and this cause was called for hearing on motion for bail pending appeal. Thereupon it was by the Court ordered that this cause be continued to June 4, 1913, at 1:30 o'clock P. M., for hearing on said motion. [65]

**Order of Continuance for Hearing on Motion for Bail
Pending Appeal.**

From the Minutes of the United States District
Court, Vol. 8, Page 533, Wednesday, June 4,
1913.

[Title of Court and Cause.]

The within cause having been called on this day for further hearing on motion for bail pending appeal and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to June 7, 1913, at 10 o'clock A. M., for further hearing on said motion. [66]

*In the United States District Court in and for the
Territory of Hawaii.*

In the Matter of the Application of LEE LEONG,
for a Writ of Habeas Corpus.

Answer to Return [to Writ of Habeas Corpus].

Comes now the petitioner, and, for answer to the second paragraph of the return of the respondent herein, he denies that the petition of the petitioner herein shows upon its face that this petitioner was, or is, the son of Chinese parents among the class of excluded aliens denied entrance into the United States; and he denies that petitioner has long since, or at all, abandoned the right to entrance into, or residence in, the United States to which he was entitled, and is entitled, by reason of being born in Hawaii.

Answering the third paragraph of said return, the petitioner denies that by any act or acts of his parents, or either of them whatever, or that by any act of his own whatever, at any time or place whatever, that the right which he acquired by reason of his birth in the Kingdom of Hawaii, was ever at any time to any extent, or in any manner whatsoever, surrendered or abrogated, or became or was or is "entirely of naught," in so far as this proceeding is concerned, or otherwise, or at all.

Answering the fifth paragraph of said return, this petitioner says that his said Hawaiian birth certificate, mentioned in his petition herein and in the exhibit to said petition attached, was at the time of filing his said petition and the issuance of the writ

of habeas corpus herein, and is now, in the possession of the respondent, and this petitioner calls upon the said respondent to [67] bring into this court at the hearing herein the said Hawaiian birth certificate.

The petitioner says that the said Hawaiian birth certificate was duly and regularly issued to the petitioner by the Secretary of the Territory of Hawaii under the great seal of the Territory of Hawaii in accordance with the provisions of the Act of the legislature of the Territory of Hawaii entitled, "AN ACT TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF HAWAIIAN BIRTH," approved April 17, A. D. 1913, and is in full force and effect, has never been canceled, set aside nor impeached, but is entitled to full faith and credit. That at the said hearing the identity of the petitioner as the holder of, and person named in, the said Hawaiian birth certificate was not questioned nor denied. The said Hawaiian birth certificate and the uncontradicted evidence of numerous witnesses who testified as to the identity of the petitioner and to his birth in Hawaii were not considered by the Immigration officers at said hearing and was arbitrarily ignored.

Answering the sixth paragraph of the said return, the petitioner denies that this petitioner, from his own showing, was not entitled to land in the United States, or in any port thereof. He denies that at the time mentioned in said petition the said petitioner was given a fair hearing or an impartial hearing or an unrestricted hearing to determine whether or not he was entitled to land at the Port of Honolulu, in

the said United States of America, or at any other port of the said United States, within the jurisdiction of this Court. He denies that the said decision of said Inspector, the respondent herein, upon said hearing will show that there was such a hearing as is contemplated by law, and denies that a fair hearing was given to the petitioner by the said respondent, and denies that the petitioner was given such a hearing as is contemplated by law by the respondent.

Answering the seventh paragraph of said return, the petitioner denies that he was accorded by the respondent such a [68] hearing as was fair or impartial, and denies that the petition of the petitioner and the exhibits attached thereto, do, or any or either of the same will or does, show that petitioner was accorded a fair or impartial hearing by the respondent.

Answering the eighth paragraph of the said return, the petitioner denies that a full, true or complete hearing was allowed the said petitioner by the respondent, as required by law; he denies that after due consideration, or any consideration whatever, by respondent of the evidence introduced at such hearing by the petitioner it was determined by the authorities invested by law with such determination, or by the said respondent, that the said petitioner was not entitled to land within the United States, and denies that any consideration whatever was given such evidence by the respondent, and denies that such determination was based upon any consideration of such evidence, and denies that such determination was otherwise than arbitrary and contrary to all of the

evidence introduced at the said hearing by the petitioner, and denies that such consideration and conclusion so reached by the respondent was based upon any consideration whatever of the evidence introduced at said hearing. He denies that after the matter was reopened for further consideration and after evidence was submitted thereon that the judgment and determination of the Inspector in Charge was thereafter made and rendered.

Having answered and traversed the return of the respondent to the petition of the petitioner herein, your petitioner, as in the said petition, prays the order and judgment of this Court that he be discharged from the custody of the respondent and given his liberty.

(Sgd.) Signed in Chinese (LEE LEONG),
Petitioner.

ANDREWS & QUARLES,
GEO. A. DAVIS,

Attorneys for Petitioner. [69]

United States of America,
Territory of Hawaii,—ss.

Lee Leong, being first duly sworn, according to law, deposes and says: That he is the Lee Leong who, as petitioner, has made and signed the above and foregoing answer to the return of the respondent in the above-entitled cause; that he has heard read and interpreted from English into Chinese the said answer and knows the contents thereof, and that the denials and facts therein stated are true.

(Sgd.) In Chinese (LEE LEONG).

Subscribed and sworn to before me this 5th day of June, A. D. 1913.

[Seal] (Sgd.) J. S. WALKER,
Notary Public 1st Judicial Circuit, Territory of Hawaii.

[Endorsed]: No. 57. (Title of Court and Cause.)
Answer to Return. Filed Jun. 5, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy.
[70]

**Order of Continuance for Hearing on Motion for
Bail Pending Appeal.**

From the Minutes of the United States District Court, Vol. 8, Page 540, Saturday, June 7, 1913.

[Title of Court and Cause.]

On this day came Mr. George S. Curry and Mr. R. P. Quarles, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent, Richard L. Halsey, and this cause was called for further hearing in the matter of the motion for bail herein pending appeal. Thereupon the Court gave each side until June 12, 1913, within which to file their briefs on the weight to be given to Chinese Birth Certificates and ordered that this cause be continued to June 10, 1913, for hearing on motion for bail pending appeal. [71]

**Order Allowing Certain Amendments and Fixing
Bail Pending Appeal.**

From the Minutes of the United States District
Court, Vol. 8, Page 550, Saturday, June 14, 1913.

[Title of Court and Cause.]

On this day came the above petitioner, in person and with his counsel, Mr. George S. Curry and Mr. R. P. Quarles, and also came the respondent herein, Mr. Richard L. Halsey, in person and with Mr. C. C. Bitting, Assistant United States District Attorney, and this cause was called for further hearing on Motion for Bail. Thereupon, on motion of counsel for the petitioner, the Court allowed certain amendments to the petition, ordered that a copy of the decision of the Secretary of Labor be attached to said petition, and that pending appeal herein petitioner be enlarged on bond in the sum of \$2,000.00. [72]

[Respondent's Exhibit No. 1—Letters from Inspector Moore to Inspector in Charge at Honolulu.]

Port of Honolulu, T. H., April 2, 1913.

Inspector in Charge, U. S. Immigration Service,
Honolulu.

I have to transmit herewith additional testimony taken in the case of LEE LEONG, an alleged Hawaiian born Chinese.

Attorney for applicant has presented affidavits signed by LEE LUN, LEE YAU, and LEE SAU. In addition to taking statements from the foregoing witnesses, statements have been taken from LEE

KING and LEE YAU, alias Lee Arn Hoo. Five witnesses in all were presented.

Witness LEE LAU, alias LEE KOI YIP, tells a story of seeing applicant Lee Leong in the Sun Chin village in China when applicant was a small boy, 4 or 5 yrs old, and of applicant telling him of his birth in Hawaii. Later he admits that he never saw applicant until 1911 when he, witness, visited China, and that was the first time he ever heard that applicant was born in Hawaii. This witness identified applicant.

Witness LEE LUN, alias LEE BAK YIP, related a very similar story, as does witness Lee Lau, in that he saw the applicant in the Sun Chin village when he, applicant, was 4 or 5 yrs of age. This witness contradicts himself many times during the examination, and admits that he is now unable to identify applicant as the boy he knew in the village prior to his coming to Hawaii. All he knows, as he says, is what applicant's parents told him.

It would appear from the testimony of witness LEE SAU that he was well acquainted with applicant and applicant's family. He tells of visiting applicant's parents immediately after their arrival in China from Hawaii. He says that he was 21 yrs of age when he came to Hawaii, and that while he was in China he visited applicant's house often, and speaks of teaching the applicant. When this witness was taken to the detention shed he identified the applicant as Lee Leong but the applicant did not know his name, did not know who he was, and said that he may have seen him in the home village but he did not know.

Witness LEE KING claims to have arrived in Hawaii 22 years ago and to have visited applicant and his parents at Waikiki, Honolulu. He says that applicant was then 3 or 4 yrs old and that he was taken to China about one year after witness' arrival. This witness states that he was unable to identify applicant as the boy he saw at Waikiki when he was in China in 1909, but that applicant's parents said it was the same boy.

Witness LEE YAU, alias Lee Arn Hoo, gives very unsatisfactory testimony. There are numerous contradictions in his testimony, and is of such a nature that little dependency can be placed on it: He tells of being acquainted with applicant's parents in the Sun Chin village from his early boyhood, and of visiting applicant's parents from the time he was a small boy. In the next breath he declares that he never knew applicant's parents until after applicant was born. This witness claims to be 9 or 10 yrs older than applicant.

Care was taken in the examination of these witnesses that they understood every question. Applicant's alleged cousin, Lee Yet, was asked by the examining inspector if all his witnesses were present and he said that they were, and that he did not know of any others.

All papers are handed you herewith.

(Sgd.) MERLEN J. MOORE,

Immi. & Act. Chinese Inspector. [73]

Port of Honolulu, T. H., March 17, 1913.

Inspector in Charge, U. S. Immigration Service,
Honolulu, T. H.

I have to hand you herewith my report and all papers in the case of LEE LEONG, an alleged Hawaiian born Chinese, who arrived at this port from China by the SS. "Siberia" March 10th, 1913. Applicant claims to have been born at Waikiki, Honolulu, and to have been taken to China at the early age of four years by his parents and younger sister. He is now 25 years of age, and has a wife and child living in the Sun Chin village, China. Five witnesses are produced who testify regarding the birth of applicant, as follows: Lee Yet, Lee Wo, Lee Keau, Lee Chew, and Siu Sam. Applicant has no relatives in Hawaii other than witness Lee Yet, who claims that his grandfather was brother to applicant's grandfather.

Applicant states that his father has no brothers or sisters and never had any; witness LEE YET states that applicant's father has one brother, and gives his name as LEE MING. Lee Yet states that Lee Ming is applicant's father's younger brother and that he saw him in China in 1900 because he was in Dow Mon at that time. Applicant never heard of a man by the name of Lee Ming.

The records of this office shows that witness Lee Yet was issued laborers' return permit #26,666 on Nov. 25, 1910, and that Lee Wo was issued laborer's return permit #26,667 on Nov. 25, 1910. The records of this office also show that Lee Yet and Lee Wo departed for China on the same steamer, Dec. 19, 1910. Witness Lee Wo was admitted on his return here on Nov. 20, 1911, and Lee Yet was admitted on his return Sept. 1st, 1911. It will be seen that wit-

nesses Lee Yet and Lee Wo were in China at the same time. Witness Lee Yet says that he was in the Sun Chin village 7 months, while witness Lee Wo says he was in this village 8 or 9 months. Applicant states that these witnesses visited his house in China frequently on these visits and that they saw his wife and [74] child on those visits. Witness Lee Yet does not know that applicant has a child; witness Lee Wo says applicant's wife has a child, a son, an infant when he was in China. It will be noted that applicant gives the date of the birth of this son as "6th month, 24th day ST. 3," or July 18, 1911, and that Lee Wo used to accompany Lee Yet on his visits to applicant's house.

Witness Lee Keau claims to have known applicant since boyhood, but when taken to the detention room applicant fails to identify him, though he identified applicant. Lee Keau was issued laborers' return permit #25,694 on Sept. 29, 1910, and departed for China Oct. 10, 1910, and was landed here on his return Aug. 8, 1911. Applicant's testimony, when recalled, relative to witness Lee Keau is very unsatisfactory.

It will be noted that witnesses Lee Yet, Lee Wo, and Lee Keau, claim to have come to Hawaii at about the same time, or when applicant was 7 or 8 years of age, applicant living at that time in China. Neither witness Lee Chew or Siu Sam can identify applicant. There is no record of Applicant's departure.

As a result of the investigation in this case the examining inspector is of the opinion that the case is fraudulent, and recommendation is made that he be

denied a landing and deported to China.

All papers herewith.

(Sgd.) MERLEN J. MOORE,

Imm. & Act. Chinese Inspector.

[Endorsed]: No. 57. (Title of Court and Cause.)
Respondent's Exhibit #1. Filed Jun. 14, 1913. A.
E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy
Clerk. [75]

[Respondent's Exhibit No. 2—Letter, Dated April
18, 1913, from Inspector to Secretary of Commerce
and Labor.]

April 18, 1913.

No. 2954/C.

The Honorable, The Secretary of Commerce and
Labor, Washington, D. C. (Thru Bureau of Immigration.)

I have the honor to inclose the record on appeal in
the case of Lee Leong, an alleged Hawaiian born
Chinese who arrived at this port on the S/S. "Siberia,"
March 10, 1913. The names of the principals are as follows:

Applicant—Lee Leong, *alias* Lee Ing Hoo.

Witness —Lee Yet, *alias* Lee Kau Hoo.

“ —Lee Wo, *alias* Lee Too Hoo.

“ —Siu Sam, *alias* Siu Shee.

“ —Lee Keau (Kow), *alias* Lee Look Hoo.

“ —Lee Chew.

“ —Lee Lau, *alias* Lee Koi Yip.

“ —Lee Lun, *alias* Lee Bak Yip.

- “ —Lee Sau, *alias* Lee Gun Hoo.
“ —Lee King, *alias* Lee Yong Hoo.
“ —Lee Yau, *alias* Lee Arn Hoo.

The applicant was denied a landing on March 17, 1913, and appeal taken on the 18th ult. A brief was filed by Attorney George S. Curry, in view of which a further hearing was given, and a supplementary brief filed. The briefs attacked the integrity of the examining officers, consequently were refused and returned to Mr. Curry. He was given an opportunity to file an additional brief, confining himself to the evidence of the record, which he said he would not do, and failed to do. Copies were made of the briefs, and the correspondence in regard thereto is forwarded to the Commissioner-General of Immigration.

In view of the record, it is recommended that the appeal be dismissed. The Hawaiian birth certificate presented by the applicant (Exhibit “A”), is inclosed together with two communications, by the examining inspector, giving a general synopsis of the case. I would ask that the Hawaiian birth certificate be returned when it has served its purpose. [76]

The next available sailings of the line involved are scheduled for May 1st and 9th.

RLH/D.

Inspector in Charge.

(Incls.)

Exact copy as signed by Richard L. Halsey.
Mailed Apr. 18, 1913. By Richard L. Halsey.

[Endorsed]: No. 57. (Title of Court and Cause.)
Respondent's Exhibit #2. Filed Jun. 14, 1913. A.
E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [77]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1913, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said court, in Honolulu, City and County of Honolulu, in the Territory of Hawaii and District aforesaid, on Saturday, the 14th day of June, A. D. 1913, the above-entitled cause having heretofore been heard on the pleadings and arguments by counsel for the respective parties, and the evidence adduced before the Court, and due deliberation had thereon, the Court finds that the writ of habeas corpus issued herein should be discharged, and the petitioner remanded to the custody of the respondent herein Richard L. Halsey, United States Immigration Inspector in Charge, subject to the taking of an appeal:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the writ of habeas corpus issued herein by, and the same is hereby discharged, and that the above-named petitioner Lee Leong be, and he is hereby remanded to the custody of the said respondent subject to the taking of an appeal, and subject to exceptions by the said petitioner.

And the Court being advised that the above-entitled cause will be removed to the Circuit Court of Appeals

for the Ninth Circuit of the United States in the City and County of San Francisco, in the State of California, by proper proceedings to be had in that behalf. [78]

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the above-named petitioner, LEE LEONG, be released upon giving his recognizance with surety, in the sum and amount of TWO THOUSAND DOLLARS (\$2,000.00), to answer the judgment of the Appellate Court, and that upon giving such recognizance the said petitioner, LEE LEONG, be released from custody.

GIVEN, MADE, and DATED, at Honolulu, City and County of Honolulu, Territory and District of Hawaii, this 14th day of June, A. D. 1913.

(Sgd.) CHAS. F. CLEMONS,
Judge of Said Court.

[Endorsed]: No. 57. (Title of Court and Cause.) Judgment entered in J. D. Book 2, at page 410. Filed Jun. 14, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy. [79]

#57.

*In the District Court of the United States in and for
the Territory of Hawaii.*

Before the Honorable CHAS. F. CLEMONS, Judge
of said Court.

In the Matter of the Application of LEE LEONG
for Writ of Habeas Corpus.

APPEARANCES:

For Petitioner, GEO. S. CURRY, ESQ., and LOR-
RIN ANDREWS, ESQ., and R. P. QUARLES,
ESQ., of the Firm of ANDREWS & QUAR-
LES;

For Respondent, C. C. BITTING, ESQ., Asst. U. S.
District Attorney.

[**Testimony and Proceedings Had in District Court.**]

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[Proceedings Had June 14, 1913.]

#57.

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APPEARANCES:

For Petitioner, GEO. S. CURRY, Esq., and LOR-
RIN ANDREWS, Esq., and R. P. QUARLES,
Esq., of the firm of Andrews & Quarles.

For Respondent, C. C. BITTING, Esq., Asst. U. S.
District Attorney.

Saturday, June 14, 1913.

The COURT.—I called the parties here to get this matter straightened out so that we may have the record more clear. We'll hear the case of Lee Leong which we will assume has been called. At the bottom of page 3, for instance, Mr. Bitting, in your Return, the decision of the Secretary of Labor is not attached.

Mr. BITTING.—I will ask permission of your Honor to attach the decision of the Secretary of Labor.

The COURT.—The permission is granted and the amendment made.

Mr. QUARLES.—The petitioner excepts.

The COURT.—Exception noted.

Mr. BITTING.—If your Honor please, at this present time I'd like to attach a copy of the Return.

(Testimony of Richard L. Halsey.)

I think Mr. Halsey should swear to this Petition as amended.

The COURT.—Mr. Halsey, this return as amended changing the last [81] three lines of page 3 and reading, “together with the decision of the Secretary of Labor,” as amended by the addition, you swear to that as true? The same is true, so help you God?

Mr. HALSEY.—Yes.

The COURT.—If the record doesn't show it will show that the respondent admits that the copy attached to the petition, the copy of the photograph, certainly is a copy and that the original photograph does represent the petitioner; that is, the identity of the petitioner is established.

[Testimony of Richard L. Halsey.]

Direct Examination of RICHARD L. HALSEY, called by the Court; sworn.

The COURT.—Mr. Halsey, the question arises whether or not this certificate of Hawaiian birth, a copy of which is annexed to the petition in the matter of Lee Leong, was actually considered by you in your decision? A. It was.

Q. Also, in regard to the oral evidence?

A. The whole record in the case was considered by me in arriving at my decision.

Cross-examination.

Mr. QUARLES.—Mr. Halsey, who was the Inspector that took the evidence in the case?

A. Mr. Moore.

Q. Now, isn't it a fact, Mr. Halsey, that Mr. Moore made a report to you and that report was considered

(Testimony of Richard L. Halsey.)

by you? A. You have the full record of the case.

Q. Didn't Mr. Moore make a report to you in writing as to the effect of the evidence and his conclusions?

Mr. BITTING.—I object to that as not being proper cross-examination or the subject of proper inquiry.

The COURT.—I allow the question.

Mr. BITTING.—We except to the ruling of the Court.

A. The memorandum, the Inspector made a memorandum on the case and I made my decision on the record.

Mr. QUARLES.—Now, Mr. Halsey, in your return you have stated that a copy of the proceedings is attached to the petition in this case.

A. What's that?

Q. In your return you have stated that a copy of the proceedings [82] was attached to the petition of the petitioner in this case. A. Yes.

Q. Will you point out in that exhibit that report or memorandum of Mr. Moore?

A. The memorandum is not a part of the case; not more than a memorandum made in an office.

Q. Wasn't that memorandum sent to the Commissioner? A. Not as a part of the record.

Q. Sent separate? It was sent to the Commissioner of Labor?

Mr. BITTING.—I object, if your Honor please. It isn't any part of the cross-examination.

The COURT.—Overruled. Exception taken and noted.

(Testimony of Richard L. Halsey.)

A. I sent a letter of transmission with the record in the case.

Q. And with this memorandum that Mr. Moore made to you? A. Yes.

Q. Now, why isn't that memorandum in the record?

A. Because it is not part of the record, and the Department states that a memorandum is not a part of the record of evidence.

Q. Where is that memorandum?

A. I haven't got it with me.

Q. You have it in the office? A. Yes.

Q. I ask you to produce it in this Court and everything else connected with this case that has not been produced.

Mr. BITTING.—We object to that.

A. I won't offer that certificate of Hawaiian birth. I don't feel that it is incumbent upon me to make that statement. You will find that the people who made the affidavits are witnesses in the case. I went into this record with exceeding care and spent much time upon it and it seems to me that these trivialities, that I should not be subjected—

The COURT.—Mr. Halsey, let me ask you just what this memorandum is.

A. The memorandum is simply a statement that a certain witness said so and so and thus and so. [83] There might be an inconsistency so and so. It's just a memorandum as to the testimony in the case.

Q. Is it in the nature of a brief on behalf of the Government pointing out to you or determining for

(Testimony of Richard L. Halsey.)

you inconsistencies which you may then take the record and see if you find and if you so find—

A. It's simply stating some things. A brief statement about the witnesses in the case and their testimony. And so far as my reasons are concerned, there are reasons which I had for denying the application which are not referred to in that memorandum. There are reasons which are justified which are not referred to at all in this memorandum.

Mr. QUARLES.—Now, Mr. Halsey, you sent with the record which is now in this case, this memorandum of Mr. Moore?

A. Yes, sir.

Mr. BITTING.—I object to the question, if your Honor please.

The COURT.—Overruled.

Mr. BITTING.—We except to the ruling of the Court.

The COURT.—Exception noted.

Mr. QUARLES.—Now, Mr. Halsey, isn't it a fact that you sent with the record to the Commissioner of Immigration and Labor, a memorandum made by Mr. Merland J. Moore as Inspector to you, and other documents, correspondence, bearing upon the question as to whether or not the petitioner should be permitted a landing in Hawaii.

Mr. BITTING.—Object to the question as improper.

The COURT.—Objection overruled.

Mr. BITTING.—Exception noted.

A. My recollection—

(Testimony of Richard L. Halsey.)

Mr. QUARLES.—And pertaining to the subject on inquiry?

A. Yes, I sent that memorandum along to the Secretary with my letter of transmission of the case.

Q. What else did you send with the record which is not attached to the petition here?

A. I think my letter of transmission of which the memorandum was practically made a part and the [84] record you have in the case was all I sent to the Secretary.

Q. Did you send to him an Hawaiian birth certificate?

A. Yes, I sent that because that's a part of the record.

Q. Where is that?

A. That Hawaiian birth certificate is in the Immigration Office, returned from Washington.

Mr. QUARLES.—Now, if your Honor please, we ask that an order be made directing the respondent to bring into this Court the memorandum, the report which Merland J. Moore made to him, the Hawaiian birth certificate introduced at the hearing, and all other documents in his possession which were sent to the Secretary of Commerce and Labor.

Mr. HALSEY.—I wish, if the Court will pardon me. The presentation in open court of a memorandum like that and the statement of all reasons in open court for a judgment, would lay the way open for unscrupulous persons in other cases to so plan and purpose as to meet those facts or statement which might show clearly that the case was fraudulent and

(Testimony of Richard L. Halsey.)

so there are administrative reasons why such a matter should not be presented.

Mr. QUARLES.—Or, in other words, the petitioner whose liability, whose constitutional rights are at stake is to be kept out of the country, denied admission upon a record a portion of which is secret. I ask that everything that Mr. Halsey says from that chair, be put into the record.

Mr. HALSEY.—The memorandum is not in the nature of evidence. The memorandum is simply a comment on the evidence.

Q. And in the nature of the brief for you?

A. In the nature of a memorandum.

Mr. BITTING.—A resume?

A. Yes, a resume. That's all there is to it. Nothing to do with the record.

The COURT.—How long would it take to get it up here?

Mr. BITTING.—I object to that being produced now, if your Honor please.

Mr. HALSEY.—The Department does not consider the memorandum [85] the expression by an Inspector on the testimony, as a part of the record in the case. I make that statement advisedly.

Mr. CURRY.—Right on that point, why did you send it to the Department if they do not consider it.

A. It is a part of my letter of transmission. They considered the record.

Mr. QUARLES.—You considered it yourself?

A. I considered the record.

Q. And this memorandum?

(Testimony of Richard L. Halsey.)

A. My determination is made on the record.

Q. Did you consider it? Answer the question, please. Did you read it? A. Yes, I read it.

Q. And examined portions of the evidence in connection with it, didn't you?

A. I went through the evidence myself.

Q. Didn't you do it in connection with this memorandum or report by Mr. Moore?

A. Not particularly.

Q. And wasn't it a statement of a finding of the facts in the case, purporting to set forth the facts shown by the evidence?

A. It was a statement in regard to each witness in the case.

Q. And the facts shown by their evidence. Now, if the Court please, we insist—

The COURT.—We will continue this matter until quarter past eleven. I will ask Mr. Halsey to bring the memorandum here at that time so as to save time.

Recess.

The COURT.—I will overrule Mr. Bitting's objection.

Mr. BITTING.—We except.

The COURT.—The exception is noted.

This is the memorandum, Mr. Halsey?

A. Yes, sir.

The COURT.—This will be admitted in evidence.

[86]

Cross-examination by Respondent.

Mr. BITTING.—Q. Mr. Halsey, was that evidence taken at the rehearing also included or taken into

(Testimony of Richard L. Halsey.)

consideration when the hearing was opened up, reopened?

A. All evidence. This is all the record. In fact, I heard a great deal of testimony myself and saw the witnesses.

Mr. QUARLES.—The first report of the Inspector, Mr. Merland J. Moore is dated the 17th of March, 1913. It was handed to you that day, was it, Mr. Halsey? A. I presume so.

Q. Well, don't you know whether it was?

A. I take it from the date of it—

Q. That's the date you made the order refusing a landing to the petitioner?

A. On that date, if I had the papers before me—

Q. What's your answer?

A. The record ought to show if that's the date. Yes, sir, that was the date that I made my decision, my first decision.

Q. Do you remember what time in the day you made that decision?

A. I am not so positive about that.

Q. Mr. Halsey, you say that as Inspector in Charge you are a very busy man, have a great many cases to pass on?

A. Hundreds of them. I sometimes go to work very early in the morning.

Q. Sometimes pass on a great number the same day?

A. Not a great number; that's a little strong statement.

Q. Now, isn't it your custom and habit, Mr. Halsey,

(Testimony of Richard L. Halsey.)

when the report of one of the Inspectors who has made the examination is handed to you that you make the order then and there on the report of the Inspector? A. No, sir.

Q. You're not in the habit of doing that?

A. I consider the testimony.

Q. You're not in the habit of considering it on these reports? [87]

A. I decide on the record.

Q. Will you answer my question?

A. I'm not in the habit of deciding where I'm not familiar.

Q. Don't you as a rule, and isn't it your habit and custom, on a report of this kind showing that he's not entitled to land that you then and there make the order? A. No, sir, I don't.

Q. You don't do that in any case.

A. They're cases in which I am familiar, like in this case, where I have seen the testimony.

Q. Did you hear it in this case?

A. Yes, sir, I heard a portion in this case.

Q. Which ones? A. I don't remember.

Q. How long was this examination? Do you remember that?

A. Yes, this examination was quite extensive and exhaustive.

Q. Was you attending to it or to other matters at that time?

A. I was attending to other matters and also I heard some of the testimony in this case.

Q. This report shows that other records not in the

(Testimony of Richard L. Halsey.)

evidence in this case furnished to you and attached as exhibit A, a copy of which is attached as exhibit A were considered. For instance, Permit 26,667?

A. What's that?

Q. This shows that the permit of return issued to Lee Yip, No. 26,667, on November 25, 1910, was considered by the Inspector. That is not a part of the evidence in this case furnished by you to the petitioner, is it? These different records here and certificates referred to in the report of Merland J. Moore, Inspector, where are they?

A. This is a certificate of residence; I suppose the certificate of residence is in his own possession.

Q. Where is the record and data from which he made this report? A. Those are in the office.

Q. Were those records sent to the Secretary of Commerce and Labor?

A. Oh, no, those are never sent. [88]

Q. But this report of Mr. Merland J. Moore was?

A. A copy of that was sent in my letter of transmission.

Q. Now, did you send anything with that letter of transmission besides these reports made by Mr. Merland J. Moore, Inspector, and the evidence of the witnesses?

A. I sent the Hawaiian birth certificate. That I regard as part of the record.

Q. Did you send anything with it?

A. That's all, to my memory, I sent to the Secretary of Labor.

(Testimony of Richard L. Halsey.)

Q. Have you a copy of that letter of transmission with you?

A. I think there is a copy of the letter of transmission there.

Q. Have you a copy in the courtroom?

A. I think so.

Q. Has Mr. Bitting a copy of that?

A. I think so.

Mr. QUARLES.—Well, ask that he produce that.

Mr. BITTING.—I object to that on the same grounds.

Q. Do you have any objection to stating what was in that letter of transmission? Was it just an ordinary letter, formal letter of transmission?

A. Formal letter of transmission. That's my memory of it, that's what I usually send along.

Mr. BITTING.—I want to make the further objection, if your Honor please, as far as this letter is concerned, that it would show a communication of another matter. I haven't any objection in the world that the portion referring to the Lee Leong matter be read into the record.

The COURT.—I will read this much into the record: "No. 2954/c, April 18, 1913. The Honorable, the Secretary of Commerce and Labor, Washington, D. C., Through Bureau of Immigration. I have the honor to inclose the record on appeal in the case of Lee Leong an alleged Hawaiian born Chinese, who arrived at this port on the S. S. "Siberia" March 10, 1913. The names of the principals are as follows: Applicant, Lee Leong, *alias* Lee Ing Hoo; wit-

(Testimony of Richard L. Halsey.)

ness, Lee Yet, *alias* Lee Kau Hoo; witness, Lee Wo, *alias* Lee Too Hoo; witness, [89] Siu Sam, *alias* Siu Shee; witness, Lee Keau (Kow), *alias* Lee Hook Hoo; witness, Lee Chew; witness, Lee Lau, *alias* Lee Koi Yip; witness, Lee Lun, *alias* Lee Bak Yip; witness, Lee Sau *alias* Lee Gun Hoo; witness, Lee King, *alias* Lee Yong Hoo; witness Lee Yau, *alias* Lee Arn Hoo. The applicant was denied a landing on March 17, 1913, and appeal taken on the 18th." Here follows the matter which Mr. Halsey says is a confidential communication.

Mr. QUARLES.—It can't be confidential if it relates to this case.

The COURT.—It doesn't relate to the merits of the case in any way; it relates to the briefs that's all.

Mr. QUARLES.—If it relates to this case we're entitled to the whole of it.

The COURT.—Then come eight lines and a half relative to the briefs without stating the merits of the briefs, then follows this paragraph: "In view of the record, it is recommended that the appeal be dismissed. The Hawaiian birth certificate presented by the applicant (*Exhibit* "), is inclosed together with two communications, by the examining inspector, giving a general synopsis of the case. I would ask that the Hawaiian birth certificate be returned when it has served its purpose. The next available sailings of the line involved are scheduled for May 1st and 9th. Inspector in Charge. RLH/D. incls.

Mr. QUARLES.—And the Court refuses my re-

(Testimony of Richard L. Halsey.)

quest that the whole communication go in?

The COURT.—I think it will all have to go in, Mr. Halsey.

Mr. BITTING.—We except to the ruling of the Court.

Mr. QUARLES.—Mr. Halsey, did you, on the 17th day of March, read the records referring to the return permits issued to Lee Yet, Lee Wo—

A. I don't think I did.

Q. And the other witnesses referred to in the record of Merland J. Moore, Inspector?

A. The records and reference to the records like that and to the certificate of residence— I [90] didn't see the certificate of residence. It's referred to there as being handed back to the man.

Q. Did you see the evidence and the record in regard to these returned laborers' permits mentioned in this report of Mr. Merland J. Moore, inspector? Did you read them?

A. No, I don't think I read them.

Q. Then Mr. Moore considered some evidence which you did not consider, isn't that true?

A. He may have read them but I can't say positively whether he did or not.

The COURT.—You just testified that they're merely used for identification.

A. That is all, to show that a man is in China.

Q. They're not used for the purpose of impeaching any of the statements of any of the witnesses, are they? A. The witnesses—

Q. You can answer yes or no.

(Testimony of Richard L. Halsey.)

A. I don't think I did.

Q. Why were these records referred to at all?

A. If a man was in China in 1898 and came back in 1899, by looking at that record you find that it was so. You look at the testimony, you'll find that the man was there when he said he was.

Q. And if you don't find he's there you consider this witness as impeached, do you?

A. It would be a matter of investigation.

Q. Can't you say yes or no to that question?

A. If I had documentary evidence that a man is in China when he claimed he was here, of course, it would impeach the man.

Q. And you would disregard his evidence entirely?

A. I know the law about his being unable to occupy two places at the same time.

Q. Were these records shown to the petitioner or to his attorney at the time of the examination? [91]

A. I expect they may have had them before him.

Q. Answer the question.

A. That the Inspector can testify to; I don't know whether they were or not.

Q. Do you know whether they were or not?

A. I know they were before the Inspector.

Q. Do you know whether they were shown to the petitioner or shown to the witnesses and their attention called to them? A. No, I do not.

Q. Then you did base your conclusion to some extent on these reports of Mr. Merland J. Moore?

A. My conclusions were based upon the record of the case; that memorandum was simply used as a sort

(Testimony of Richard L. Halsey.)

of a guide, a synopsis of the case; and the second memorandum that was submitted there, I paid very little attention to. The evidence itself, on the second hearing—

Q. But on the first hearing instead of reading the evidence— A. I read the evidence.

Q. You took the report of Mr. Merland J. Moore and considered it? A. I read the evidence.

The COURT.—He didn't say so, Judge Quarles.

Q. Will you turn to the evidence in the case and point out any statement of any witness which shows that Lee Leong the petitioner was not born in Hawaii?

The WITNESS.—I object to do so.

The COURT.—I sustain the objection.

Mr. QUARLES.—We except to the ruling of the Court.

Mr. CURRY.—Point out the evidence that this man was in the class of persons included from admission to the United States.

Mr. BITTING.—Object to that.

The COURT.—I sustain Mr. Bitting's objection.

Mr. CURRY.—To which we except, may it please the Court.

The COURT.—Exception noted. [92]

Mr. CURRY.—Mr. Halsey, referring to the Exhibit A and which I show you, that was the decision and the entire decision which you entered in the case?

Mr. BITTING.—Object to that as the decision is the best evidence and speaks for itself.

(Testimony of Richard L. Halsey.)

The COURT.—I will allow that.

A. That's my decision.

The COURT.—Is that the only decision?

A. On the rehearing I reaffirmed that decision.

Mr. CURRY.—In that decision which you said constitutes the whole decision on file do you find any passing by you on this Hawaiian birth certificate?

A. That is in the record. My decision was on the record. That is part of the record.

Q. But you didn't make any reference to the Hawaiian birth certificate?

A. Now, you're trying to argue in regard to the decision and not in regard to the hearing and I object to answer your question.

The COURT.—The objection is sustained.

Mr. CURRY.—Exception noted.

The COURT.—I understood you, Mr. Halsey, that you did consider it; that the Hawaiian birth certificate was considered by you? A. Yes.

Mr. CURRY.—Do I understand that you passed upon the weight and sufficiency of this certificate?

Mr. BITTING.—Object to the question; it is not pertinent to this inquiry.

The COURT.—I understood Mr. Halsey to say that the Hawaiian birth certificate was before him and that he considered it as a part of the evidence.

A. Certainly.

Mr. CURRY.—I will withdraw the question. That's all for Mr. Halsey. We'll call Mr. Moore.

[**Testimony of Merland J. Moore, for Petitioner.**]

Direct Examination of MERLAND J. MOORE, a witness called for Petitioner and sworn.

Mr. QUARLES.—Q. What is your business, your official position, if any?

A. I'm Immigration and Acting Chinese Inspector in the U. S. Immigration Service.

Q. At what port? A. Honolulu.

Q. And who is the Inspector in Charge?

A. Richard L. Halsey.

Q. As such inspector did you make the examination in the case of Lee Leong, the Petitioner here?

A. I examined the witnesses presented in that case.

Q. And you made a report and signed it and delivered it to Mr. Halsey, did you, as to—

The COURT.—That matter is not disputed, Judge Quarles.

Mr. QUARLES.—You're the Merland J. Moore who signed this memorandum?

Mr. BITTING.—What's the object of this?

Mr. QUARLES.—I want to show how that examination was conducted by this witness.

Mr. BITTING.—Well, the evidence itself shows, your Honor.

Mr. QUARLES.—Are you the Merland J. Moore who signed this? A. That's my signature.

Q. This also? A. That's mine.

Q. Now, with this memoranda or record signed by you you delivered that with the evidence in the case to Mr. Halsey, did you?

(Testimony of Merland J. Moore.)

A. I passed those over to Mr. Halsey.

Q. And with it you delivered an order denying his admission? A. No, sir.

Q. Didn't you prepare that order? [94]

A. No.

Mr. BITTING.—I object to leading this witness any further that way.

The COURT.—Objection overruled.

Mr. QUARLES.—Do you know how long after you signed that report that Mr. Halsey signed the order? A. No, sir.

Q. Denying admission? A. No, sir.

Q. You don't know whether it was the same day or not, do you? A. No.

Q. Now, Mr. Moore, you examined certain records there in regard to return permits of the witnesses as a part of that case.

The COURT.—Calling your attention to the memoranda dated April 2.

A. Laborer return permits, I believe; looking up the departure and arrival of the witnesses.

Q. Now, did you show that to the witnesses at the time? A. Yes, sir.

Q. At the time they were testifying?

A. Yes, sir.

Q. Why doesn't the record show that?

A. Well, probably didn't come in in the question.

Q. You say the record in that case was shown to Lee Yet and read by him or read by you to him?

A. What I did say, I took the return permit and showed it to the witness and I showed his

(Testimony of Merland J. Moore.)

photograph attached to the return permit and I asked him if that was his photograph and he said it was and then I showed him the date of the certificate; then he told me he went back on that date. That was all I did.

Q. Well, I see in the record there are some of them stated, not verified. What does that mean?

The COURT.—Point one out, Mr. Quarles, that would be fairer and save time.

Mr. QUARLES.—For instance, the witness Lee Chew, the record [95] shows C. R. 4875, not verified.

A. That means that that witness has never made a trip to China since that certificate was issued to him.

Q. How do you know that fact?

A. Because every Chinese leaving this port must present, I won't say that he must have a certificate verified, before he is issued proper papers.

Q. Verified where?

A. At Washington. He presents that certificate at our office.

Q. That wasn't shown to the witness?

A. He had the certificate himself. That's his own certificate.

Q. In that case, "not verified," means you didn't show him any records in the office?

A. We had no reference.

Mr. CURRY.—You said the C. R. in the testimony and the return permit referred to in your memoranda were one and the same thing? A. No.

(Testimony of Merland J. Moore.)

Q. It's not?

A. I don't understand the question.

Q. You just testified that the C. R., C. R. No. 486 referred to the return permits which are mentioned in your communication to the Inspector in Charge?

A. I don't know exactly what you meant, but I presume that the reference is made to the same Chinese person to which this return permit is *issued presented* the certificate of residence.

Q. The C. R. there, where the C. R. appeared, refers to the laborer's certificate of residence. This Chinese laborer is supposed to have the return permit.

Mr. HALSEY.—Both of them are formal papers of identification.

Mr. CURRY.—Did you show the man the return permit and did you show him the record of his case when that return permit was issued?

A. It was all together.

Q. Is it not a fact that when a Chinese returns the return permit is forwarded to the Department at Washington?

A. You'd have to ask the Inspector-in-Charge about that. [96]

Mr. CURRY.—Will you admit that that's a fact?

Mr. HALSEY.—I think that's the practice now.

Mr. CURRY.—It will help things very much, Mr. Bitting, if you'll admit that the return permits that are issued to a man are sent to Washington.

Mr. BITTING.—If that's a fact we'll admit it.

Mr. CURRY.—What did you show, Mr. Moore,

(Testimony of Merland J. Moore.)

the record of their testimony that they gave at that time showing when they went to China, when they came here and when they went to China?

A. You want to know what I showed them?

The COURT.—What you showed to him.

Q. For instance, to the witness Lee Yet and to the witness Lee Wo. I had reference to their return permits. Did you show them the record of their statements upon the trial of their cases when they got a return permit?

A. I had the return permit before me and it was acknowledged by them that that was their paper, and in the case of faults, I just simply exhibited the whole record to them.

Q. What do you mean by “the old record”?

A. The whole record.

Q. Their testimony?

A. Their testimony. The witness’s testimony and the return permit in that particular case.

Q. Did you read the statements in that record to them or could they read it themselves.

The COURT.—There’s no question about that. How does that come in evidence here?

Mr. BITTING.—I don’t see how this kind of inquiry can possibly affect the matter.

Mr. CURRY.—I don’t think there are any more questions, Mr. Moore. (Last question read.)

The COURT.—You might answer that.

A. Those statements were signed by themselves or by their witnesses.

Q. They recognized their signatures? [97]

(Testimony of Merland J. Moore.)

A. They did. And the oath was signed beneath their signature. Did you read and interpret it to them on this hearing? You say this certificate was attached. Was it read and interpreted to them on this hearing.

* Mr. BITTING.—Object to that as immaterial and couldn't possibly have any bearing on the matter.

The COURT.—To save time I'll allow the question.

A. I gave them the purport of the testimony that they gave.

The COURT.—You showed them the papers?

A. I showed them the papers and gave them an opportunity to explain it.

Mr. CURRY.—Then, Mr. Moore, the testimony which you got in this case which you handed to the Inspector in Charge, a copy of which is attached does not contain all the questions asked on this examination by you?

A. All questions and answers.

Q. Will you point out this testimony in the case of Lee Wo where you asked him about this return certificate.

Mr. BITTING.—I object to going into that; counsel has stopped once or twice.

The COURT.—I will allow it in this way, Does this record show the presentation to the witness of his Chinese certificate and the examination, if there were any, upon it?

A. Yes, sir, a complete record inasmuch as any questions and answers that may have been directed

(Testimony of Merland J. Moore.)

direct to the witness, as I considered a part of the record this was kind of a side issue I turned to the witness and in a general manner wanted to know certain things in particular. These little side questions—

Q. Does that refer, do you refer now to those numbers opposite the witness's name beginning his testimony for residence, C. R. presented?

A. Yes, when he presented the papers and when I got the papers from the vaults.

Q. That is for the identification of these witnesses? [98] A. Yes.

Mr. CURRY.—That's a certificate of residence, did you get that from the vault? A. I don't know.

Q. Isn't it a fact that he carried it on his person?

A. If he presented it he carried it. I am referring to return permits.

Q. There is no reference here to those?

A. No, I won't say that, I haven't read that.

The COURT.—That's all, I believe. It appears from the evidence and the record in the case that the Petitioner had a fair hearing.

Mr. QUARLES.—Before closing, your Honor, we make the offer and want the record to show it, of evidence showing that this Petitioner was born in Hawaii. We have a dozen witnesses here showing that fact.

The COURT.—The Court declines to hear the evidence.

Mr. QUARLES.—To which the Petitioner excepts.

The COURT.—Exception noted: on the ground that it is not within my jurisdiction, not within my power, not proper for me as will presently appear.

This is my decision: It appears from the evidence and the record in the case that the petitioner had a fair hearing within the contemplation of law, and the decisions of the Supreme Court of the United States. Whether or not the Inspector's decision was right I don't know that I have to say, but I am inclined to believe that especially after the rehearing of the case the evidence was such as would justify his decision. The finding is one I am sure that if it were a finding of a jury upon the same facts could not be set aside. The case is, I say, one of those characterized by Justice Holmes as a case of a judgment, erroneous though it may be, but nevertheless the judgment of an authority of competent jurisdiction exercising its powers fairly and without bias. The Writ is dismissed and the Petitioner is remanded.

Mr. CURRY.—We except to that decision and ask for a ruling on [99] the point made as to the Hawaiian birth certificate. That is, there are two grounds alleged in this decision, whether or not it was an unfair hearing and the other a question of law as to the Hawaiian birth certificate and we respectfully ask for a ruling of your Honor on the point of the Hawaiian birth certificate.

The COURT.—I think it's only right for me to pass on that. I intended to and intend to in a memorandum of opinion which I can't file now but I have under way. I propose to rule on that point right now. Counsel have asked for a specific ruling on

the point raised with regard to the certificate of Hawaiian birth. It appears that that certificate was given consideration by the Inspector. That I should think is sufficient so long as there is some evidence, as I find, to justify the Inspector's ruling. The law of Hawaii, assuming that it is the law in a case of this kind and governs the actions of a distinct department of the United States, makes the record only *prima facie* but not conclusive evidence, and whether there was sufficient evidence to overcome the *prima facie* presumption it seems to me is something for the Inspector himself to determine unless it appears very clear that there was no evidence to overcome that presumption. I cannot say under the record that there was not such evidence, but I am inclined to believe that the presumption was overcome. It must be remembered that while this record is given, or certificate of Hawaiian birth is to be given, full faith and credit,—we will assume for the purposes of the case, although I don't admit it to be law,—yet the full faith and credit to be given to this record and the amount of evidence necessary to refute the presumption of its being correct depends somewhat on the fact that this is not a certificate issued pursuant to a record made as *res gestae* or in the regular course of business, like a record of deaths, births, and marriages made upon the representation made by disinterested parties at the [100] time; for instance: a clergyman certifying to a marriage or physician certifying to a birth or death. It is a certificate made at an *ex parte* hearing, made in this case some twenty-five years after

the Petitioner was born. My views in the matter I hope to set forth in a memorandum of opinion.

Mr. CURRY.—From which decision we except and give notice of intention to appeal and move that the Petitioner be enlarged on bail.

The COURT.—We will fix the bail at \$2,000.00

Mr. BITTING.—We except to the ruling of the Court allowing bail.

The COURT.—Exception noted. [101]

[Certificate of Reporter to Testimony, etc.]

I hereby certify that the foregoing is a full, true, and correct transcript of my shorthand notes of the testimony in the above-entitled cause.

Honolulu, T. H., September 9, 1913.

O. P. SOARES,
Official Reporter.

[Endorsed]: No. 57. (Title of Court and Cause.)
Transcript of Evidence. Filed Sep. 10, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [102]

[Decision.]

*In the United States District Court for the Territory
of Hawaii.*

No. —.

In the Matter of the Application of LEE LEONG
for a Writ of Habeas Corpus. [103]

In the final decision herein, made orally at the conclusion of the hearing, I expressed the purpose to file a memorandum of my opinion in writing.

There is, however, need of adding little to what was then said, aside from the statement of the case which follows.

A writ of habeas corpus issued on the allegation of the petitioner Lee Leong's unlawful detention in the custody of the respondent, the immigration inspector in charge at the port of Honolulu, for the purpose of deportation, the petitioner being entitled to land as a citizen by virtue of birth in Hawaii on or about the 21st day of January, 1888, of parents then domiciled here and lawfully married, and he being now on his return to Hawaii after having at the age of four years been taken to China by his parents with whom he has since resided there. The petition for the writ alleged as the basis for the inspector's detention of the petitioner, a mere semblance of a hearing,—an unfair hearing,—in that no consideration was given by the immigration officers to a certificate issued by the Secretary of the Territory of Hawaii under the great seal of the Territory, dated the 21st day of November, 1912, to the effect that the petitioner was born in Hawaii on the 21st day of January, 1888, and in that no consideration was given to “the uncontradicted evidence of numerous witnesses who testified as to the identity of the petitioner [104] and to his birth in Hawaii.” The petition also showed an appeal to the Secretary of Commerce and Labor from the inspector's finding of want of birth in Hawaii, and an affirmance of the inspector's decision and order of deportation.

A return to the writ was sustained on exceptions, because, as it appeared to me, it showed that the re-

spondent held the petitioner by virtue of a determination made by competent authority and duly affirmed; and further because at that stage there was in the respondent's return no admission of the identity of the petitioner with the person named in the birth certificate. The Court took occasion, however, to criticise the prolix and repetitious character of both the return and the petition. It may be noted also that the exception to the return for its embodiment of a demurrer to the petition is well taken; for, the writ having issued, any attack on the sufficiency of the petition should have been made by motion to quash or vacate. 21 Cyc. 317; Church, Habeas Corpus, 2d ed., sec. 169. "The return should be responsive to the writ, and not to the petition upon which it is based." Church, Habeas Corpus, 2d ed., sec. 160.

Finally, on a traverse to the return, issues were raised as to the following facts:

1.—The petitioner's being of the excluded class of aliens;

2.—The abandonment or surrender of his right to enter or reside in the United States;

3.—The issuance of the Hawaiian birth certificate;
[105]

4.—The fairness and impartiality of the hearing;

5.—The consideration by the immigration officers of the birth certificate and of uncontradicted evidence in behalf of the petitioner;

6.—The rendition of a judgment and determination of the inspector after his admission of further evidence on reopening.

A hearing was then had in which it was shown that the inspector had given consideration to the birth certificate,—which would be presumed in any event (*Ex parte Wing You*, 190 Fed. 294, 297), unless it be for the issue made on that point under the pleadings. But of course the question of law still remained whether the consideration given was due consideration.

At the hearing the fact of the issuance of the certificate and the identity of the petitioner with the person whose photograph is annexed thereto, were admitted by the Government. It also appeared that the inspector had ample evidence to establish preliminarily that the petitioner was the son of Chinese parents of the excluded class.

The point of expatriation need not concern us. Even assuming that under the circumstances shown by the evidence the petitioner by remaining away for some years after having reached his majority, impliedly renounced his nationality and allegiance as an American citizen (if he was such), still as the determination of the inspector did not raise any question of expatriation,—did not rest upon any ground of expatriation, but rather on the failure to show birth in [106] Hawaii,—no such question was open here.

It also appeared that the petitioner on appeal had the benefit of the supplementary evidence adduced on rehearing and that although there was no other formal judgment than the original decision, still the memorandum of the inspector, “after consideration of the record I see no reason to change the opinion

already formed," reaffirms the former decision or adopts it by reference.

The fairness and impartiality of the hearing on the question of his birth in Hawaii, which includes the question of the consideration given the birth certificate, i. e., its due consideration as a matter of law, was, then, the only point which remained.

Forthwith I rendered an oral decision holding that the immigration officers had given a fair hearing within the contemplation of law; that the finding of the inspector was one as to which there might be difference of opinion, but which could not be set aside merely because wrong (*Chin Yow vs. United States*, 208 U. S. 8, 11-12, 13); also that the birth certificate had been given due consideration by the inspector; and I indicated that even if such certificate were to be given full faith and credit and could not be set aside until overcome by some evidence, yet it could be overcome by a smaller weight of evidence than a certificate based upon a record made pursuant to a *res gestae* report, or contemporaneous report made in the course of business—i. e., a certificate issued, as this was, not until 25 years after [107] the party's birth and upon an *ex parte* hearing then had, would, though *prima facie* evidence, still not be entitled as against other evidence to such weight as, e. g., a certificate based upon a report of birth, marriage or death made contemporaneously by an attending physician or clergyman.

The petitioner's essential point was that the certificate of birth was made *prima facie* evidence of the facts therein stated, by session laws of Hawaii,

1911, act 96, sec. 3, and must be given full faith and credit under Revised Statutes, sec. 906, in spite of which, as he contended, the immigration officers gave no consideration to this certificate and none to the petitioner's witnesses.

But *prima facie* evidence stands only until overcome by "controlling evidence or discrediting circumstances." *Kelley vs. Jackson*, 31 U. S. (6 Pet.) 622, 631-632. And the immigration officers were, in my opinion, at liberty to find from the evidence discrediting circumstances if nothing more.

Assuming the birth certificate to be entitled to credit as *prima facie* evidence,—though the view of this court seems to have been otherwise in the matter of *Su Yen Hoon*, 3 U. S. Dist. Ct. Haw. 606, 609, 610, applying a statutory provision similar to that now re-enacted in the session laws of 1911,—there was also before the immigration officers matters which they were at liberty in their province as weighers of evidence to regard as casting doubt upon the fact of birth. There was the discrediting circumstance [108] that the petitioner produced before the immigration officers ten witnesses besides himself, offering them as persons who had knowledge of facts which would establish his birth in Hawaii, but whose testimony shows an absence of such knowledge,—testimony, either the barest hearsay, or inconsistent and untrustworthy, or insufficient when pieced together to connect the immigrant with the person born in Hawaii, taken to China at four years of age and now returning. Hereinafter the words "the boy Lee Leong" will indicate the boy born in Hawaii as dis-

tinguished from the word "petitioner" which will indicate the petitioner holding the birth certificate on the claim of being the same Lee Leong.

The reports of immigration officer Moore (marked "U. S. Exhibit 1," introduced by petitioner on cross-examination of the inspector, being letters of March 17th and April 2d, 1913) point out this untrustworthiness in detail.

The witness Lee Yet, a relative of the petitioner (Petition, Exhibit "A"), and—not a negligible circumstance,—the man who applied for the birth certificate (see *Id.*, and see birth certificate, *Id.*) connected the boy Lee Leong with a person who had an uncle (father's brother) Lee Ming, and who had no child, but the petitioner says that his father had no brother, that he did not know any Lee Ming, and that he himself had a child (Petition, Exhibit "A"). Lee Yau, who claimed to have known the boy Lee Leong at least since the latter was 4 or 5 years old (*Id.*) and who saw him often and visited his house often until he was 8 or [109] 9 years old, and who saw the petitioner in 1910 some 13 years afterwards, could not identify the petitioner as the boy Lee Leong. Lee Sau, who claimed to be well acquainted with the boy Lee Leong and with his family and visited them immediately after their arrival in China (in 1892) and again in 1907, and used to teach him, was unknown to the petitioner either by face or name. Lee Lung, who knew the boy Lee Leong from the time of the latter's arrival in China, and who came to Hawaii when the boy Lee Leong was about 9 years old (1897) and was in China again in 1910 and staid

for 9 months in the village of Sun Chin, where the boy Lee Leong is alleged to have resided, was unable to identify the petitioner as the boy Lee Leong. Lee Lau, who testified to seeing the boy Lee Leong in China when the latter was 4 or 5 years old, and who lived in the same village of Sun Chin until 1900 (Petition, Exhibit "A"), i. e., until the boy Lee Leong was 12 years old, admitted that he never saw the petitioner until 1911 (Id.).

It was within the discretion of the immigration officers, who saw the witnesses and observed their demeanor when testifying, to give weight as a discrediting circumstance to the fact that none of the witnesses could identify the petitioner as the boy Lee Leong, although some of the witnesses had known him and his family very well for different periods of time, some short and others longer, and that the petitioner could not identify witnesses who knew the boy Lee Leong (e. g., Lee Keau and Lee Sau, and see Petition, Exhibit "A"; U. S. Exhibit 1, letter of April 2, 1913). [110]

When persons who ought to know, and whom the petitioner offers as witnesses who do know that petitioner is who he claims to be, prove not to know the petitioner to be the boy alleged to have been born in Hawaii and who at the age of 4 went to China and to whom the certificate is alleged to apply, that fact certainly may raise a question whether the petitioner, though identified (by admission of the Government) as the person whose photograph is annexed to the birth certificate, was really the person who was born in Hawaii and who went to China and

for whose birth the certificate is alleged to have issued. If the petitioner had relied only on the birth certificate and if this certificate must be given *prima facie* credit as evidence, then of course in the absence of other evidence, it alone would be sufficient to entitle him to land. But when he offers the certificate and in addition asserts that he was a boy who was born in Hawaii and who at the age of 4 went to Sun Chin village and lived there until the age of 25, and that the certificate applies to that boy, and when he produces witnesses who claim that they had an opportunity to know the boy Lee Leong and his family very intimately there in that small village continuously from 1 year to 8 years, or until the boy was 12 years old, but are shown by their own testimony not to have been able on return visits to China, and not now to be able here to identify the petitioner as that boy, and when the petitioner himself cannot identify some of these [111] witnesses, surely a doubt is thereby cast upon the fact of the petitioner's being the same person as the boy Lee Leong, and so a doubt also upon the certificate which he claimed to apply to that boy and to prove that boy's (and his own) birth in Hawaii. If the circumstances above set forth do not directly discredit the certificate itself, they indirectly do the same thing by raising a doubt as to the truth of the fact in issue, the petitioner's birth in Hawaii which the certificate is offered to prove.

Also, a minor circumstance may be noted in the discrepancy of one month between the date of birth as given in the certificate and as claimed by the peti-

tioner in his testimony.

There appear in the record two statements which may be termed "gratuitous" (or at least the second may), but which should have passing notice. First, in the report of officer Moore to the inspector (U. S. Exhibit 1, letter of March 17, 1913), it is stated that "there is no record of the departure of the applicant." This report was not regarded as a part of the record but as in the nature of a memorandum or brief on the case (Tr., pp. 4, 5, 6, 7) and it is not to be presumed that anything in it was considered as evidence either at the original hearing or on the appeal. Though, possibly, under the decision in *Tang Tun vs. Edsell*, 223 U. S. 673, 681, it may have been proper to have considered it in any event; the Court taking judicial notice that at the time of the alleged departure passenger lists were required to be filed with officers of the Hawaiian government before clearance of vessels. Penal Laws of Hawaii, 1897, sec. 1177, embracing [112] the law in force in 1892. No point, or objection, was made on account of this report by petitioner's counsel in argument at the hearing. Second, the inspector in his testimony at the hearing on traverse to the return, says, "You will find that the people who made the affidavits are witnesses in the case." This referred clearly enough to the fact that the witnesses who gave testimony before the Secretary of the Territory as a basis for the birth certificate, were witnesses at the hearings before the immigration officers; from which an inference might be justified that the weak testimony, the want of knowledge, of these witnesses here would

discredit the certificate founded on their testimony there. But it does not appear, and cannot be presumed that this stated fact was considered by the inspector in reaching his decision, or by the Secretary of Commerce and Labor on the appeal; it was entirely new matter, brought out for the first time at the hearing here. And no point, or objection, was there made on account of it by petitioner's counsel. These two items should not, therefore, be considered in determining the fairness of the proceedings before the immigration officers. They serve only to suggest the question whether, even in spite of any unfairness in the hearing before these officers, the petitioner would be found on a full and fair hearing to be entitled to land. See *Chin Yow v. United States*, 208 U. S. 8, 13.

The writ is discharged and the petitioner remanded to the custody of the respondent.

(Sgd.) CHAS. F. CLEMONS,

Judge United States District Court. [113]

[Endorsed]: No. 57. (Title of Court and Cause.)
Decision Denying Writ. Filed October 13, 1913. A.
E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [114]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge
of the Above-entitled Court:

Lee Leong, conceiving himself aggrieved by the order and judgment made and entered on the 14th day of June, A. D. 1913, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith his assignment of errors intended to be urged upon appeal, and he prays that his appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 16th day of June, A. D. 1913.

LEE LEONG,

By (Sgd.) GEO. S. CURRY.

ANDREWS & QUARLES,

His Attorneys.

Received a copy of the above petition.

(Sgd.) C. C. BITTING,

Assistant United States Attorney,

United States District Attorney, District and Territory of Hawaii.

[Endorsed]: No. 57. (Title of Court and Cause.)
Petition for Appeal. Filed Jun. 16, 1913. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy.
[115]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon the application of Lee Leong and upon the
motion of his attorneys Geo. S. Curry and Andrews
& Quarles:

IT IS HEREBY ORDERED that the petition for
appeal heretofore filed herein by the petitioner Lee
Leong be, and the same is hereby granted; and that
an appeal to the United States Circuit Court of Ap-
peals for the Ninth Circuit from the final order and
judgment heretofore, on the 14th day of June, A. D.
1913, filed and entered herein, be and the same is
hereby allowed, and that a transcript of the record
of all proceedings and papers upon which said final
order and judgment was made, duly certified and au-
thenticated, be transmitted, under the hand and seal
of the Clerk of this Court, to the United States Cir-
cuit Court of Appeals for the Ninth Circuit of the
United States, at San Francisco, in the State of Cali-
fornia.

Dated this 16th day of June, A. D. 1913.

(Sgd.) CHAS. F. CLEMONS,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

Received a copy of the above order.

(Sgd.) C. C. BITTING,

Assistant United States Attorney, District and Ter-
ritory of Hawaii.

[Endorsed]: No. 57. Order Allowing Appeal.
Filed Jun. 16, 1913. A. E. Murphy, Clerk. By
(Sgd.) F. L. Davis, Deputy. [116]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

Assignment of Errors.

And now comes Lee Leong, the above-named petitioner by his attorneys, Geo. S. Curry and Andrews & Quarles, and says that in the record and proceedings in the above-entitled matter there is manifest error and that the final record and judgment, made and entered in said matter on the 14th day of June, A. D. 1913, is erroneous and against the just rights of the said petitioner Lee Leong, in this, to wit:

First: The above-entitled court erred in refusing to sustain the exceptions of the petitioner to the return of the respondent, said return being insufficient in law, in that the said return did not show that the petitioner was held under any valid order or process,

and did not show that the petitioner was a Chinese laborer, or alien born, or within any of the classes of persons excluded from admission to the United States.

Second: The above-entitled court erred in refusing to grant the motion of the *petition* for his discharge upon the fact of the said return, the said return being insufficient for the reasons stated in the first assignment of error herein.

Third: The above-entitled court erred in ruling that there was evidence in the record attached to the petitioner's petition as Exhibit "A" sufficient to show that the petitioner was alien born and not born in the Hawaiian Islands.

Fourth: The above-entitled court erred in ruling that there [117] was evidence in said record attached to the petitioner's petition as Exhibit "A" sufficient to support the order made by the United States Immigration Inspector in Charge denying the petitioner admission to the United States and ordering his deportation; all of the evidence in the record shows and tends to show that the petitioner was born in the Hawaiian Islands, lived in the Hawaiian Islands until he was 4 years of age, when he was taken to China by his parents, and there being no evidence whatever in the record showing that the petitioner had voluntarily expatriated himself by forswearing allegiance to the United States or swearing allegiance to any foreign government whatever.

Fifth: The above-entitled court erred in ruling that there is or was evidence in the said record justifying the United States Immigration Inspector in

Charge in ignoring the Hawaiian Birth Certificate presented by the petitioner, a copy of which is attached to the petitioner's petition herein as Exhibit "B," there being no evidence whatever in said record impeaching the said Hawaiian Birth Certificate and no evidence whatever showing that the fact of Hawaiian Birth of the petitioner stated in said Hawaiian Birth Certificate was or is not true.

Sixth: The above-entitled Court erred in holding that the petitioner was given a full and fair hearing by the United States Immigration Inspector in Charge, in that the entire record shows that the Petitioner established by evidence the fact of his Hawaiian Birth, and that he was entitled to admission, and the record shows that the evidence was utterly ignored by the said United States Immigration Inspector in Charge, who refused to give any credence or weight whatever to the said Hawaiian Birth Certificate, and to the evidence of the witnesses showing and tending to show the Hawaiian Birth of the petitioner.

Seventh: The above-entitled court erred in holding that the return of the respondent to the writ of habeas corpus issued herein [118] was or is sufficient in law, and the said Court erred in refusing to hold that said return was and is insufficient.

Eighth: The above-entitled court erred in refusing to accept the offer made by the petitioner in open court to show by witnesses present in court the fact that he was born in the Hawaiian Islands and a native-born citizen of the United States, and in refusing such evidence.

Ninth: The above-entitled court erred in ordering that the writ of habeas corpus issued herein be discharged and in discharging the said writ, and in remanding the petitioner to the custody of the respondent, the evidence showing that the petitioner was born in the Hawaiian Islands, and there being no evidence to show that the petitioner was an alien Chinese laborer, or that he belonged to any of the classes of persons excluded from admission to the United States.

WHEREAS by the law of the land the writ of habeas corpus should have been made absolute, and the said petitioner, Lee Leong, discharged from custody.

And the said Lee Leong now prays that the order and judgment of the 14th day of June, A. D. 1913, hereinabove mentioned may be reversed, annulled, and held for naught, and that he, the said petitioner, may have such other and further relief as may be proper in the premises.

Dated this 16th day of June, A. D. 1913.

LEE LEONG,

By his Attorneys.

(Sgd.) GEO. S. CURRY.

(Sgd.) ANDREWS & QUARLES.

Received a copy of the above assignment of errors.

(Sgd.) C. C. BITTING,

Assistant United States Attorney, District and Territory of Hawaii. [119]

[Endorsed]: No. 57. (Title of Court and Cause.)
Assignment of Errors. Filed June 16, 1913. A. E.

Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy.
[120]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States to the United
States of America, and ROBERT W. BRECK-
ONS, Its Attorney, Greeting:

You are hereby cited and admonished to be and ap-
pear at the United States Circuit Court of Appeals
for the Ninth Circuit, to be held at the City and
County of San Francisco, State of California, within
thirty days from the date of this Writ, pursuant to
an order allowing an appeal, filed in the Clerk's of-
fice of the United States District Court for the Dis-
trict and Territory of Hawaii, wherein Lee Leong
is appellant and you are appellee, to show cause, if
any there be, why the judgment in said appeal men-
tioned should not be corrected, and speedy justice
should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS
WHITE, Chief Justice of the Supreme Court of the
United States of America, this 16th day of June,
A. D. 1913, and of the Independence of the United

States the one hundred and thirty-seventh.

C. F. CLEMONS,
Judge, U. S. District Court, District and Territory
of Hawaii.

[Seal] Attest: A. E. MURPHY,
 Clerk, U. S. District Court.
 By F. L. Davis,
 Deputy Clerk.

Received a copy of the within citation.

C. C. BITTING,
Assistant United States Attorney,
*U. S. District Attorney, District and Territory of
Hawaii.*

Let the within citation issue.

CHAS. F. CLEMONS,
Judge of said Court. [121]

[Endorsed]: No. 57. (Title of Court and Cause.)
Citation on Appeal. Filed Jun. 16, 1913. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy.
[121a]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in
this cause, to be filed in the office of the Clerk of the
United States Circuit Court of Appeals for the Ninth
Judicial Circuit, and include in said transcript the

following pleadings, proceedings and papers on file, to wit:

1. Petition for a writ of habeas corpus, filed May 16, 1913.

2. Order for issuance of writ of habeas corpus, filed May 16, 1913.

3. Writ of habeas corpus, and return of service, filed May 17, 1913.

4. Return of Richard L. Halsey to writ of habeas corpus, filed May 22, 1913.

5. Exceptions to return and motion to discharge, filed May 26, 1913.

6. Decision overruling exceptions to return, and denying motion to discharge petitioner, filed June 2, 1913.

7. Petitioner's traverse and answer to return of respondent, filed June 5, 1913.

8. Judgment discharging the writ of habeas corpus, and remanding the petitioner, filed June, 14, 1913.

9. Petition for appeal, filed June 16, 1913.

10. Assignment of errors, filed June 16, 1913.

11. Order allowing appeal, filed June 16, 1913.

12. Citation on appeal, filed June 16, 1913. [122]

13. All minute entries in the above-entitled cause.

14. Transcript of all testimony and proceedings.

15. This praecipe.

16. Bond for costs on appeal.

17. Clerk's Certificate to Transcript.

Said transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth

Circuit, and filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, in the State of California, before the 16th day of July, A. D. 1913.

Dated this 20th day of June, A. D. 1913.

LEE LEONG,

Said Petitioner, Appellant.

By ANDREWS & QUARLES,

GEO. S. CURRY,

His Attorneys.

[Endorsed]: No. 57. (Title of Court and Cause.)
Praecipe for Transcript. Filed Jun. 20, 1913. A.
E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy.
[123]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

ON APPEAL TO THE CIRCUIT COURT OF
APPEALS FOR THE NINTH JUDICIAL
CIRCUIT OF THE UNITED STATES.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Lee Leong, petitioner-appellant in the
above-entitled cause, as principal, and Lee Chuck and
Yee Yap of Honolulu, City and County of Honolulu,
in the Territory of Hawaii, merchants, as sureties,
are held and firmly bound unto Richard L. Halsey,
United States Immigration Inspector in Charge, in
the sum of FIVE HUNDRED DOLLARS (\$500.00),
lawful money of the United States, to be paid to the

aforesaid Richard L. Halsey, United States Immigration Inspector in Charge, his respective executors, successors, administrators and assigns, to which payment well and truly to be made, we bind ourselves and each of us, our and each of our respective heirs, administrators, executors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Honolulu, City and County of Honolulu, in the Territory of Hawaii, this 21st day of June, A. D. 1913.

WHEREAS, the above-bounded Lee Leong, petitioner-appellant, has appealed to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, from the final order and judgment dismissing the writ of habeas corpus issued [124] in this proceedings, and remanding the petitioner-appellant into the custody of Richard L. Halsey, United States Immigration Inspector in Charge at the port of Honolulu, in the District and Territory of Hawaii, made and entered up by and in said Court on the 14th day of June, A. D. 1913, in the above-entitled proceeding, by the above-entitled court, and praying that said judgment and order and each of them may be reversed;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Lee Leong, petitioner-appellant aforesaid, shall prosecute his appeal to effect and shall answer all damages and costs to which the said Richard L. Halsey, United States Immigration Inspector in Charge, may be entitled, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

IN WITNESS WHEREOF the aforesaid principal and the aforesaid sureties have hereunto set their hands and seals at Honolulu, City and County of Honolulu, District and Territory of Hawaii, this 21st day of June, A. D. 1913.

(Sgd.) In Chinese (LEE LEONG), [Seal]
Principal.

(Sgd.) LEE CHUCK, [Seal]

(Sgd.) YEE YAP, [Seal]

Sureties.

Witness to signature of Lee Leong:

(Sgd.) GEO. S. CURRY.

The foregoing bond is approved as to form, amount and sufficiency of sureties.

Dated, Honolulu, Territory of Hawaii, June 23, 1913.

(Sgd.) S. B. DOLE,
Judge, United States District Court in and for the
District and Territory of Hawaii.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Lee Chuck and Yee Yap, being severally sworn, say: The said Lee Chuck, that he resides at Honolulu, in the Territory of Hawaii, and is worth the sum of more than ONE THOUSAND DOLLARS [125] in property, not by law exempt from execution, over and above all his debts and liabilities; and the said Yee Yap, that he resides in Honolulu, in the Territory of Hawaii, and is worth the sum of more than ONE THOUSAND DOLLARS, in property, not by

law exempt from execution, over and above all his debts and liabilities.

(Sgd.) LEE CHUCK.

(Sgd.) YEE YAP.

Subscribed and sworn to by the said Lee Chuck and Yee Yap, before me this 21st day of June, A. D. 1913.

[Seal] (Sgd.) S. DE FREEST,

Notary Public, First Judicial Circuit, Territory of Hawaii.

[Endorsed]: No. 57. (Title of Court and Cause.)
Bond on Appeal. Filed Jun. 23, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk.
[126]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 57.

In the Matter of the Petition of LEE LEONG for
a Writ of Habeas Corpus.

United States of America,
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the District Court of the United States for the District of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 127, inclusive, to be a true and complete transcript of the record of proceedings had in said court in the matter of the Petition of Lee Leong for a Writ of Habeas Corpus, as the same remains of rec-

ord and on file in my office, and I further certify that I hereto annex the original citation on appeal and orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$36.35, and that said amount has been paid by appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 15th day of October, A. D. 1913.

[Seal]

A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [127]

[Endorsed]: No. 2331. United States Circuit Court of Appeals for the Ninth Circuit. Lee Leong, Appellant, vs. The United States of America, Appellee. In the Matter of the Petition of Lee Leong for a Writ of Habeas Corpus. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Received and filed October 23, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

No. 2331
~~2321~~

7

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

LEE LEONG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

In the Matter of the Petition of LEE LEONG for a
Writ of Habeas Corpus.

BRIEF ON BEHALF OF APPELLANT.

STATEMENT OF CASE.

On the 16th day of May, 1913, the apellant filed his petition for a Writ of Habeas Corpus in the United States District Court for the Territory of Hawaii and the writ was then issued. In the petition apellant set forth the following facts:

That he was born on the Island of Oahu, Hawaii, on the 21st day of January, 1888, and at the time of such birth both of his parents were permanent residents of Hawaii; his father's name being Lee Sing and his mother's name being Lum Shee; that he lived in Hawaii four years and was then taken to the Vil-

lage of Sun Chin, China, by his parents, where he lived until February, 1913, when he sailed for Honolulu, reaching Honolulu the 10th day of March, 1913, as a passenger on the S. S. Siberia; that on the 21st day of November, 1912, the Secretary of the Territory of Hawaii, after application, upon due and orderly hearing, as provided by law, issued to and for the petitioner a certificate of Hawaiian birth, certifying that this petitioner was born in the Hawaiian Islands on or about the 21st day of January, 1888, to which certificate was attached the Great Seal of the Territory and the photograph of petitioner; that petitioner was denied a landing by Richard L. Halsey, Immigration Inspector in Charge, United States Immigration Service; that petitioner was given the semblance of a hearing to determine whether he should be allowed to land or be returned to China; that said hearing was not a fair and bona fide hearing; that at said hearing the said certificate of Hawaiian birth was presented to the said Immigration Officer and a large number of witnesses examined, who testified that petitioner was born at Waikiki; that such proceedings were conducted illegally and improperly and the Immigration authorities did not arrive at a conclusion, or make findings, based upon the tetsimony of the witnesses, and did not give any weight to the certificate of Hawaiian birth presented, and did not base the decision or conclusion made on the evidence offered, but denied petitioner admission and ordered him deported to China, in spite of the evidence in the case, and in excess of the jurisdiction vested in them, and without giving to the petitioner a fair and impartial hearing.

With said petition the petitioner annexed a copy

of the evidence taken before the Immigration Officers, and a copy of said Hawaiian birth certificate.

The writ was made returnable before the Honorable Charles F. Clemons, one of the Justices of the said District Court, on the 21st day of May, 1913, at ten o'clock A. M. (Tr. 89), and the proceedings continued to the 27th of May. (Tr. 91.) May 27th, Richard Halsey, Inspector in Charge, filed his return to the writ. (Tr. 91-96, inc.) To the said return, the petitioner filed exceptions and motion to discharge (Tr. 96-99), upon the following grounds: Among others, that said return, in the nature of a demurrer, attempted to deny certain facts stated in the petition, attempted to plead new matter in avoidance of other facts stated in said petition, and did not respond to the writ by showing the facts, circumstances and proceedings under which the petitioner was being detained, and consisted largely of conclusions; that such return as a whole was insufficient and did not show proceedings under which the petitioner was detained or could legally be detained.

The hearing of said cause was continued from May 27th to May 28th. (Tr. 100.)

The Inspector in Charge, as respondent, moved to strike petitioner's exceptions to the return on various grounds. (Tr. 100-101.)

Various continuances were had until June 4, 1913. June 5, 1913, the petitioner filed answer or response to the return. June 7th, the case was continued to June 10th, and each side given to June 12, 1913, to file briefs on the weight to be given the Chinese birth certificates. (Tr. 109.)

June 14th, certain amendments to the petition were allowed, and it was ordered that a copy of the decision of the Secretary of Labor be attached to the

petition and the petitioner be at large on bail in the sum of \$2,000. (Tr. 110.) June 14th, judgment was rendered discharging the writ, denying the petition and remanding the petitioner to the custody of respondent, fixing the recognizance of the petitioner in the sum of \$2,000, pending appeal. (Tr. 117-118.)

A careful study of the appeal record shows that the proceedings in the District Court were irregular, in that the cause seems to have been heard by piecemeal, numerous and divers adjournments were had, and that on the 14th day of June the cause was reopened, divers amendments allowed and further evidence heard. (Tr. 120 to 146, inc.)

The petition for appeal was filed June 16, 1913. The order allowing appeal was made on the same day, and the petitioner's assignments of error were filed with the petition for appeal, and citation on appeal issued on the same day. (Tr. 157 to 164, inc.) Bond on appeal was given on the 21st day of June, 1913. (Tr. 166-169.) Nearly four months after the appeal had been perfected, the Honorable Charles F. Clemons, Judge, who heard the case, filed a written decision in the case. (Tr. 146 to 156.)

The assignments of error are nine in number, and we will take them up in the argument.

ARGUMENT.

This cause is of great importance to the petitioner. He has constitutional rights at stake. He is a citizen of the United States by virtue of having been born in the Kingdom of Hawaii in January, 1888, and by reason of the provisions of Section 4 of the Act of Congress, April 30, 1900, 31 Stats. L. 141 c. 339, and subsequent acts amending the same. By

the provisions of the Constitution of the Republic of Hawaii, adopted in 1894, Article 17, Section 1, all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the Republic of Hawaii are citizens thereof. By statute, Act 96, Session Laws of Hawaii, 1911, the Secretary of Hawaii is authorized to issue to persons born in Hawaii certificates of Hawaiian birth, and the same are made *prima facie* evidence. This case is important not only to the petitioner, but to many others, the principal question being whether an Immigration Inspector may, arbitrarily and summarily, without evidence to the contrary, ignore and refuse a citizen admission on the ground that he does not believe the witnesses who testify for him, and in the face of the fact that such citizen has an Hawaiian birth certificate.

We will now consider the assignments of error.

FIRST AND SECOND ERRORS. FIRST: THE ABOVE-ENTITLED COURT ERRED IN REFUSING TO SUSTAIN THE EXCEPTIONS OF THE PETITIONER TO THE RETURN OF THE RESPONDENT, SAID RETURN BEING INSUFFICIENT IN LAW, IN THAT THE SAID RETURN DID NOT SHOW THAT THE PETITIONER WAS HELD UNDER ANY VALID ORDER OR PROCESS, AND DID NOT SHOW THAT THE PETITIONER WAS A CHINESE LABORER, OR ALIEN BORN, OR WITHIN ANY OF THE CLASSES OF PERSONS EXCLUDED FROM ADMISSION TO THE UNITED STATES. (Tr. 159-160.) SECOND: THE ABOVE ENTITLED COURT ERRED IN REFUSING TO GRANT THE MOTION OF THE *PETITION* FOR HIS DIS-

CHARGE UPON THE FACE OF THE SAID RETURN, THE SAID RETURN BEING INSUFFICIENT FOR THE REASONS STATED IN THE FIRST ASSIGNMENT OF ERROR HEREIN. (Tr. 160.) The return to the petition was insufficient in law in that it did not show that the petitioner belonged to any of the classes excluded from admission to the United States, and did not show that the petitioner was alien born. The said return amounted to denials and admissions of the Hawaiian birth, objections to the sufficiency of the petition which had been passed upon in the first instance by the issuance of the writ and had become *functus officio*. The said return (Paragraph 5) neither admits nor denies the allegations of the third paragraph of appellant's petition, which paragraph related to the Hawaiian birth of the petitioner. Failing to show that the petitioner was of alien birth, the Inspector in Charge had no jurisdiction whatever to deny him a landing on the ground, as the return seems to attempt to justify, that his parents were Chinese and lived in China. This assignment of error, we contend, is well taken, should have been sustained, and the motion of the appellant for his discharge should have been granted. The Inspector in Charge, without showing or stating in his return that the appellant was of alien birth, but, on the other hand, "neither admits nor denies" the same, the time of the District Court should not have been consumed in any further hearing whatever of the case, but the petitioner should have been summarily discharged from the restraint of the Inspector. An analysis of the return would seem to show that the respondent claims that he is not bound to accept an Hawaiian birth certificate as *prima facie* evidence,

that he is not bound to believe any witness that testifies as to the birth of the petitioner, and that he may arbitrarily and summarily refuse to permit a citizen to land and order him deported when he himself cannot show whether or not he is a citizen or native born. We submit that such a return does not comply with the letter, spirit or intent of Section 757, Revised Statutes (3d Fed. Stat. Ann. 173), which provides:

“The person to whom the writ is directed shall certify to the court or justice or judge before whom it is returnable the true cause of the detention of such party.”

The procedure in habeas corpus cases is prescribed very fully in the Acts of Congress relating thereto. The substance of the return is provided by the statute above quoted. Nowhere in the statutes relating to habeas corpus do we find any provision for a demurrer to the petition. We submit that under these statutory provisions that a return in the nature of an answer to a bill in equity where the respondent neither admits nor denies, but leaves the complainant to his proof, is insufficient. The return seems to contemplate that the Inspector in Charge may arbitrarily and summarily hear evidence proving an applicant's citizenship by birth, and, without any contradictory evidence, arbitrarily refuse to accept it, order his deportation, and justify the same by the legal conclusion which appears in the return herein as follows:

“That the petitioner was accorded such a hearing as was fair and impartial.” (Tr. 94.)

The exception of the petitioner to the said return should have been sustained and the petitioner should have been discharged.

THIRD, FOURTH AND FIFTH ERRORS.

THIRD: THE ABOVE - ENTITLED COURT ERRED IN RULING THAT THERE WAS EVIDENCE IN THE RECORD ATTACHED TO THE PETITIONER'S PETITION AS EXHIBIT "A" SUFFICIENT TO SHOW THAT THE PETITIONER WAS ALIEN BORN AND NOT BORN IN THE HAWAIIAN ISLANDS. (Tr. 160.) FOURTH: THE ABOVE-ENTITLED COURT ERRED IN RULING THAT THERE WAS EVIDENCE IN SAID RECORD ATTACHED TO THE PETITIONER'S PETITION AS EXHIBIT "A" SUFFICIENT TO SUPPORT THE ORDER MADE BY THE UNITED STATES IMMIGRATION INSPECTOR IN CHARGE DENYING THE PETITIONER'S ADMISSION TO THE UNITED STATES AND ORDERING HIS DEPORTATION; ALL OF THE EVIDENCE IN THE RECORD SHOWS AND TENDS TO SHOW THAT THE PETITIONER WAS BORN IN THE HAWAIIAN ISLANDS, LIVED IN THE HAWAIIAN ISLANDS UNTIL HE WAS 4 YEARS OF AGE, WHEN HE WAS TAKEN TO CHINA BY HIS PARENTS, AND THERE BEING NO EVIDENCE WHATEVER IN THE RECORD SHOWING THAT THE PETITIONER HAD VOLUNTARILY EXPATRIATED HIMSELF BY FORSWEARING ALLEGIANCE TO THE UNITED STATES OR SWEARING ALLEGIANCE TO ANY FOREIGN GOVERNMENT WHATEVER. (Tr. 160.) FIFTH: THE ABOVE-ENTITLED COURT ERRED IN RULING THAT THERE IS OR WAS EVIDENCE IN THE SAID RECORD JUSTIFYING THE UNITED STATES IMMIGRATION INSPECTOR IN CHARGE IN IGNORING THE HAWAIIAN BIRTH CERTIFI-

CATE PRESENTED BY THE PETITIONER, A COPY OF WHICH IS ATTACHED TO THE PETITIONER'S PETITION AS EXHIBIT "B," THERE BEING NO EVIDENCE WHATEVER IN THE SAID RECORD IMPEACHING THE SAID HAWAIIAN BIRTH CERTIFICATE AND NO EVIDENCE WHATEVER SHOWING THAT THE FACT OF HAWAIIAN BIRTH OF THE PETITIONER STATED IN SAID HAWAIIAN BIRTH CERTIFICATE WAS OR IS NOT TRUE. (Tr. 160-161.) THE COURT ERRED IN HOLDING THAT THERE WAS EVIDENCE IN THE RECORD ATTACHED TO THE PETITIONER'S PETITION AS EXHIBIT "A" SUFFICIENT TO SHOW THAT THE PETITIONER WAS ALIEN BORN AND NOT BORN IN THE HAWAIIAN ISLANDS. These assignments of error bring us to a consideration of the evidence in the case. In the beginning of the proceedings before the Inspector (Tr. 18), we find the following:

"Applicant presents Hawaiian Birth Certificate No. 95A, dated Nov. 21, 1912."

It was admitted that the photograph attached to the Hawaiian birth certificate represented the petitioner and established his identity. (Remarks of the Court, Tr. 121.) Mr. Halsey admits that the original certificate is in the Immigration Office and has been returned from Washington. (Tr. 125.) In the written decision filed nearly four months after the appeal had been taken in this case the Court says:

"At the hearing the fact of the issuance of the certificate and the identity of the petitioner with the person whose photograph is annexed thereto, were admitted by the Government." (Tr. 149.)

Under the Hawaiian statute this Hawaiian birth certificate is *prima facie* evidence of the Hawaiian birth of the petitioner and *prima facie* entitled him to enter into the United States. The validity of this Hawaiian certificate is not attacked. It is not claimed that it was procured by fraud or any improper means whatever. It is simply ignored by the Inspector in Charge.

In addition to the Hawaiian certificate, the petitioner testified to his Hawaiian birth, only from hearsay and from having heard his mother talk about it at different times—the only way he could know it.

Lee Yet testified (Tr. 26-33), and his evidence is in substance as follows: He knew by repute that petitioner was born in Hawaii. He was told so by Lee Sing and by Lum Shee, the father and mother of petitioner, when he was a boy in Hawaii. He heard the petitioner's Hawaiian birth frequently discussed when he was young in China.

Lee Wo testified (Tr. 33-38), in substance, that he was living in Sun Chin, China; that he first saw the petitioner when petitioner was three or four years old; that he saw the parents of petitioner with petitioner come to the village, having come from Hawaii; that he saw them after arrival and on their arrival they said they were from Hawaii; that petitioner had a sister younger than he.

Siu Sam, fifty years of age, testified (Tr. 39-42): That she came to Hawaii thirty years ago. That Lee Sing and Lum Shee, his wife, lived in Hawaii before petitioner was born; that they lived at Wai-kiki, at Kong Sing banana plantation; that she lived near them; that they had a son and a daughter born to them in Hawaii, the son being Lee Leong, the petitioner, and the daughter, Lee Moy; that the peti-

tioner was three or four years old when she first saw him and that she knew that they went from Hawaii to China.

Lee Keau (Kow) (Tr. 43-47) testified that petitioner was born in Hawaii and that he knew it from declarations of the parents of petitioner; that he was living in Sun Chin village, China, when the parents of petitioner returned from Hawaii; that petitioner was then four or five years old; that when the witness came to Hawaii the petitioner was about ten years old; that he saw the petitioner in China in 1910.

Lee Chew testified (Tr. 47-51) that he knew of his own knowledge that petitioner was born at Waikiki; that he (the witness) visited the parents of petitioner before they had any children; that said parents of petitioner lived on Kong Sing banana plantation, Waikiki, Hawaii, when witness went there; that afterwards he attended a dinner given by Lee Sing and Lum Shee to celebrate the birth of the petitioner, who was then one month old; that he visited their house often, sometimes once a week, sometimes two or three times a month, while they lived in Hawaii and before they went to China, and that they went to China about twenty years ago.

Lee Lau testified (Tr. 56-63) in substance that the parents of Lee Leong lived in China; that the witness first came to Honolulu in 1900 and was then seventeen years old; that he went back to China in 1910 and returned in July, 1912; that he was born in Sun Chin, China; that petitioner is twenty-four or twenty-five years old; that his parents live in Sun Chin, China; that petitioner was born at Waikiki, Honolulu; that petitioner was four or five years old when he first saw him; that he came with his parents

from Hawaii to China; that his parents said they came from Hawaii; that many people in Sun Chin, China, said that petitioner was born in Hawaii.

Lee Lung testified (Tr. 64-69) that petitioner was four or five years old when he first saw him; that he first saw him at Sun Chin village, China; that petitioner came from Hawaii with his parents; that he saw the petitioner and his parents when they arrived in a boat and saw them go along the street into the village; that was the first time that he ever saw them. The witness also testified that when he came to Hawaii petitioner was eight or nine years old.

Lee Sau also testified (Tr. 70-74) that he was living in Sun Chin, China, when Lee Sing and Lum Shee came from the Hawaiian Islands to China; that they brought with them the petitioner, then a boy four or five years of age, and a daughter, Lee Moy, younger than petitioner; that he saw them when they first came back to China and that the parents of petitioner then said they came from Hawaii.

Lee King testified (Tr. 75-81) that Lee Leong, the petitioner, was born in Hawaii; that he first saw him at Waikiki when he was three or four years old; that his father was working on a banana plantation; that he visited them for about a year at Waikiki and that he afterwards saw the petitioner in China in 1909. He did not recognize petitioner, but did recognize the father of petitioner, and petitioner's father said that he was the boy that was born in Hawaii.

Lee Yau testified (Tr. 81-86) that he saw Lee Leong in China before he came to Hawaii; that the petitioner was then four or five years old; saw him at Sun Chin village with his parents; that petitioner came to China from Hawaii with his parents when he was about four years old; that the witness came

to Hawaii when petitioner was about eight or nine years old; that petitioner's parents told him that petitioner was born in Hawaii. The witness did not see the parents of petitioner return to Sun Chin, China, but saw them a few days afterwards; that he believes the petitioner was born in Hawaii because his parents told him he was.

Of course, on a few immaterial matters the testimony of these witnesses is inconsistent and to some extent contradictory, but on the main fact, the Hawaiian birth of the petitioner, the evidence is all one way. Three of the witnesses—Siu Sam, Lee Chew and Lee King—saw the petitioner when he was a small child, one of them when he was a month old, with his parents at Waikiki on a banana plantation, and saw him frequently and visited his parents frequently in Hawaii until they returned to China, when the petitioner was about four years of age. The other witnesses—Lee Yet, Lee Wo, Lee Lau, Lee Lung, Lee Sau, and Lee Yau—all saw the appellant in China with his said parents when he was four years old or more. Some of them actually saw the family returning from Hawaii to the village of Sun Chin. The Inspector in Charge has no right nor power nor jurisdiction to absolutely shut his ears to all evidence, refuse to believe all evidence, refuse to accept any evidence, and arbitrarily say: "You cannot come into the United States." What witness in this case has testified to the fact that the petitioner was born in China? What witness in this case has testified to any facts impeaching the Hawaiian birth certificate and impeaching the evidence of these witnesses? What witness has testified to any fact showing that the petitioner was not born at Waikiki, on the Island of Oahu, in the Kingdom of Hawaii,

in the year 1888? We insist that the third, fourth and fifth assignments of error should all be sustained; that there is no evidence in the record impeaching the Hawaiian birth certificate; no evidence showing it was procured by fraud or mistake or upon false evidence; and no evidence in the record showing that the petitioner is of alien birth, but, on the other hand, there is considerable evidence showing that the petitioner was born on a banana plantation at Waikiki, Hawaii. It is an easy matter to state a generality, to state a conclusion or an opinion, but in a case of this kind the question is, is such conclusion justified by the facts? Applying the ordinary rules of evidence and ordinary rules of law to this case, we say that the record shows beyond peradventure that the petitioner is of Hawaiian birth, and, therefore, a citizen, and entitled to admission, and that the Immigration Inspector has no jurisdiction to order him deported to the country whence he came.

SIXTH ERROR. SIXTH: THE ABOVE-ENTITLED COURT ERRED IN HOLDING THAT THE PETITIONER WAS GIVEN A FULL AND FAIR HEARING BY THE UNITED STATES IMMIGRATION INSPECTOR IN CHARGE, IN THAT THE ENTIRE RECORD SHOWS THAT THE PETITIONER ESTABLISHED BY EVIDENCE THE FACT OF HIS HAWAIIAN BIRTH, AND THAT HE WAS ENTITLED TO ADMISSION, AND THE RECORD SHOWS THAT THE EVIDENCE WAS UTTERLY IGNORED BY THE SAID UNITED STATES INSPECTOR IN CHARGE, WHO REFUSED TO GIVE ANY CREDENCE OR WEIGHT WHATEVER TO THE SAID HAWAIIAN BIRTH CERTIFICATE, AND TO THE EVIDENCE OF

WITNESSES SHOWING AND TENDING TO SHOW THE HAWAIIAN BIRTH OF THE PETITIONER. (Tr. 161.) We earnestly contend, with all respect to the trial judge, that the sixth assignment of error is well taken and should be sustained. Reading and studying this record through, there seems to have been a studied and persistent effort on the part of the Inspector to discredit the evidence of witnesses. It must be borne in mind that here is a Chinaman who, although of Hawaiian birth, and a citizen, had been in China from the time he was four years of age, ignorant of the English language, without counsel, and the Inspector acting as a prosecutor would act in a criminal case, endeavoring to discredit the petitioner and every witness who testified for him; and we insist that this record shows pronouncedly that the Chinese Inspector who examined petitioner and the various witnesses was laboring, not to ascertain the truth, but for the purpose of endeavoring to get inconsistencies upon immaterial matters into the record, so that the witnesses might be discredited and their evidence ignored. We insist that this is not a fair hearing. We insist also that the evidence of Mr. Halsey is subject to the criticism, that it is not fair and frank and openly given. (Tr. 121 to 136.) His answers are evasive. He continually objected to answering questions. Certain admissions made by him were reluctantly made and the record so shows, and, without doing any injustice whatever to Mr. Halsey, we think that his examination in court shows prejudice against the petitioner, and does not show that he was earnestly endeavoring to ascertain the truth, but that his actions and those of the inspectors under him were directed to one thing, and that was to keep the petitioner out and

not let him in United States territory. As an example, counsel for the petitioner was endeavoring to show that certain reports and matters had been sent to Washington, and statements made by Mr. Halsey had been sent for the purpose of having an influence upon the case which were not delivered to petitioner and which had not been shown in court in this case. Take the cross-examination of Mr. Halsey, commencing on page 121 of the transcript, and note the effort required to get him to admit that the report and recommendations of Merlen J. Moore were sent to Washington. Note the question:

"Q. Now, isn't it a fact, Mr. Halsey, that Mr. Moore made a report to you and that report was considered by you?

A. You have the full record of the case.

Q. Didn't Mr. Moore make a report to you in writing as to the effect of the evidence and his conclusions?

A. The memorandum, the Inspector made a memorandum on the case and I made my decision on the record."

Further on he reluctantly admits that the report was sent to Washington, but says not as a part of the record, but separate from it. He also admits that he sent a letter of transmission and that certain recommendations were made in it, but he objects to producing the letter, but was finally compelled by the court to do so, and when the letter is produced and a portion of it read into the record (Tr. 131-132), we find in his said letter the following:

"In view of the record, it is recommended that the appeal be dismissed. The Hawaiian birth certificate presented by the applicant (Exhibit ' '), is in-

closed together with two communications, by the examining inspector, giving a general synopsis of the case."

Mr. Halsey endeavors to make it appear that he considered the entire record. And he is compelled to admit (Tr. 133) that he did not read laborers' permits mentioned in report of Moore and other evidence introduced for the purpose of verifying or contradicting or impeaching witnesses; and on page 134 he says he does not know whether such records were shown to the petitioner or not; that he knows they were before the Inspector. He does not know whether they were shown to petitioner or shown to the witnesses or not.

It thus appears that a portion at least of the examination was secret and not disclosed to the petitioner or to the witnesses. Is this a fair hearing? And is it fair for an Inspector to act as judge upon the rights of an American citizen to come into his own country? To act as a prosecutor and recommend to the appellate power, the Commissioner of Labor, that the appeal be dismissed? And is there not enough in this record to show that the Inspector in Charge has acted as a partisan, biased and prejudiced against the petitioner, and acted as his prosecutor, shown the disposition to keep him wrongly out of the United States, instead of giving that deliberate, calm and judicial consideration to the evidence in the case which should be given, and then giving that evidence the weight to which it is fairly entitled under all rules of evidence, law, equity and justice? Did Congress intend that the Inspector in Charge of an Immigration Station, or that examining inspectors at such a station, should have the unlimited and arbitrary power of simply saying "Yes"

or "No," regardless of the evidence produced to show whether or not an immigrant is entitled to land? We cannot find such an intent in the Statutes. We think that this assignment of error should be sustained. And we desire to call attention now to what we regard as a correct principle, to-wit: That when the Supreme Court of the United States said that an immigrant is entitled to a fair hearing, that it meant to say that the case should not only be fairly presented in behalf of the applicant, but that it should also be fairly decided on the evidence of the case. To be fair in permitting the introduction of evidence and then to unfairly consider that evidence, or ignore it altogether, does not give a fair hearing, which, of necessity, includes a fair determination and decision upon the evidence introduced at the hearing. Here the evidence is all one way, in support of the fact of Hawaiian birth. Of course, much of it is hearsay evidence and not entitled to a great deal of weight, but on no material fact at issue, or involved, is there any contradiction or conflict in the evidence.

SEVENTH ERROR. SEVENTH: THE ABOVE-ENTITLED COURT ERRED IN HOLDING THAT THE RETURN OF THE RESPONDENT TO THE WRIT OF HABEAS CORPUS ISSUED HEREIN WAS OR IS SUFFICIENT IN LAW, AND THE SAID COURT ERRED IN REFUSING TO HOLD THAT SAID RETURN WAS AND IS INSUFFICIENT. (Tr. 161.) This error covers to a large extent the first and second assignments of error, and under this head we desire to emphasize the position which we have taken, that the said return, viewed by the Act of Congress relating to habeas corpus cases, nowhere shows that the plaintiff is a Chinaman,

alien born, and nowhere shows that the petitioner was not born in Hawaii, but does take the position that the respondent neither denies nor admits his Hawaiian birth. This being true, the respondent shows no just cause for detention of the petitioner, nor for refusing to admit him, nor for ordering his deportation.

EIGHTH ERROR. EIGHTH: THE ABOVE-ENTITLED COURT ERRED IN REFUSING TO ACCEPT THE OFFER MADE BY THE PETITIONER IN OPEN COURT TO SHOW BY WITNESSES PRESENT IN COURT THE FACT THAT HE WAS BORN IN THE HAWAIIAN ISLANDS AND A NATIVE-BORN CITIZEN OF THE UNITED STATES, AND IN REFUSING SUCH EVIDENCE. (Tr. 161.) At the trial the petitioner had present a number of witnesses who would testify to his Hawaiian birth, and offered to prove that fact, but the trial court peremptorily refused to hear such evidence. (Tr. 143.) The offer was made, the court declined to hear the evidence, and the petitioner duly excepted. We claim that this was error.

NINTH ERROR. NINTH: THE ABOVE-ENTITLED COURT ERRED IN ORDERING THAT THE WRIT OF HABEAS CORPUS ISSUED HEREIN BE DISCHARGED AND IN DISCHARGING THE SAID WRIT, AND IN REMANDING THE PETITIONER TO THE CUSTODY OF THE RESPONDENT, THE EVIDENCE SHOWING THAT THE PETITIONER WAS BORN IN THE HAWAIIAN ISLANDS, AND THERE BEING NO EVIDENCE TO SHOW THAT THE PETITIONER WAS AN ALIEN CHINESE LABORER, OR THAT HE BELONGED TO ANY

OF THE CLASSES OF PERSONS EXCLUDED FROM ADMISSION TO THE UNITED STATES.

(Tr. 162.) A discussion of the ninth assignment of error involves a discussion of the other errors assigned, and therefore, what we have here tofore said in regard to the other assigned errors, applies to this one.

We desire to emphasize, although at the expense of repetition, our contention that the immigration authorities have no right, power, or authority, to ignore the positive evidence in a case and refuse to give it weight. Such action is not according to the appellant a fair hearing. In this case the right of appellant to enter the United States was based upon his citizenship. The immigration authorities had no right whatever, without evidence, to deny his entry. The burden of showing that he belonged to one of the excluded classes was upon the immigration authorities.

U. S. ex rel. Castro vs. Williams, 203 Fed. 155. In this case the appellant had citizenship rights which the immigration authorities had no jurisdiction or authority whatever to ignore, but were bound to respect the same, and the arbitrary denial of those rights is not a fair hearing, and does not come within the purview of any Act of Congress. Immigration authorities act in an administrative, and not judicial capacity, and must follow definite standards. One of the definite standards recognized in American jurisprudence is that an American citizen may come and go at his will and cannot be excluded from entry into the United States when he has been in a foreign country.

U. S. vs. Uhl, 203 Fed. 152.

U. S. ex rel. Castro vs. Williams, id. 155.

“The law is well settled that one born in the United States of Chinese parents who were permanently domiciled here, though an alien, is a citizen of the United States, and cannot be excluded therefrom, or denied the right of entry.”

Lee Sing Far. vs. United States, 94 Fed. 834, 836.

U. S. vs. Wong Kim Ark, 169 U. S. 649, 705.

“The statutes purport to exclude aliens only. They create or recognize, for present purposes it does not matter which, the right of citizens outside the jurisdiction to return to the United States. If one alleging himself to be a citizen is not allowed a chance to establish his right in the mode prescribed by those statutes, although that mode is intended to be exclusive, the statutes cannot be taken to require him to be turned back without more. The decision of the Department is final, but that is on the presupposition that it was after a hearing in good faith, however summary in form. As between the substantive right of citizens to enter and of persons alleging themselves to be citizens to have a chance to prove their allegations, on the one side, and the conclusiveness of the commissioner’s fiat, on the other, when one or the other must give way, the latter must yield. In such a case something must be done, and it naturally falls to be done by the courts. * * *

“The petitioner then is imprisoned for deportation without the process of law to which he is given a right. Habeas corpus is the usual remedy for unlawful imprisonment. But, on the other hand, as yet the petitioner has not established his right to enter the country. He is imprisoned only to prevent his entry, and an unconditional release would make the entry complete without the requisite proof. *The courts must deal with the matter somehow, and there*

seems to be no way so convenient as a trial of the merits before the judge. If the petitioner proves his citizenship, a longer restraint would be illegal. If he fails, the order of deportation would remain in force."

Chin Yow vs. United States, 208 U. S. 8, 52, L. ed. 369.

In re Su Hen Hoon, Third Dist. Ct. Rep. for Hawaii, 606, the court lays down the rule that Hawaiian birth gives the right to land and this right is not dependent upon any certificate.

In *Chen Hing vs. United States*, 133 Fed. 227, a Chinese immigrant and two other Chinese testified to his birth in the United States and no evidence to contradict the same except a statement made by the immigrant to an inspector prior to hearing. The judgment of the District Court affirming the order for his deportation held reversible for error.

Where a Chinese testified that he was born in the United States and his evidence was corroborated by his uncle and cousin and wholly uncontradicted, the commissioner was not justified in holding that he had not established his right to remain in the United States "by affirmative proof to the satisfaction of the commissioner."

Moy Suey vs. U. S., 147 Fed. 697.

"If she was not an alien immigrant within the intent and meaning of the Act of Congress entitled 'An Act in Amendment of the Various Acts Relative to Immigration and Importation of Aliens under Contract or Agreement to Perform Labor,' approved March 3, 1891 (26 Stat. at L. 1084, chap. 551), the commissioner had no power to detain or deport her, and the final order of the circuit court must be reversed."

Gonzales vs. Williams, 192 U. S. 1.

U. S. vs. Williams, 189 Fed. 915.

“That any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who, on that ground, applies to any United States court for a writ of habeas corpus, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination.”

Gee Fook Sing vs. United States, 49 Fed. 146.

“Being a citizen, the law could not intend that he should ever look to the government of a foreign country for permission to return to the United States, and no citizen can be excluded from this country except in punishment for crime. Exclusion for any other cause is unknown to our laws, and beyond the power of Congress.”

Re Look Tin Sing, 10 Sawy. 353, 21 Fed. 905.

See also

Ex parte Chan San Hee, 35 Fed. 354.

Re Yung Sing Hee, 36 Fed. 437.

Re Wy Shing, 36 Fed. 553.

“It is conceded that, if he is a citizen of the United States, the acts of Congress known as the Chinese exclusion acts, prohibiting persons of the Chinese race, and especially Chinese laborers, from coming to the United States, do not and cannot apply to him.”

United States vs. Wong Kim Ark, *supra*.

In the case of *Fong Yim*, 134 Fed. 938, it was held that the courts have jurisdiction to determine in habeas corpus proceedings the right of a Chinese merchant domiciled in this country to enter from

China, or of members of his family whose right is incidental to his own, where the remedy by appeal to the Secretary of Commerce and Labor has been exhausted, and the right of entry denied.

See also *Ex parte Koerner*, 176 Fed. 478.

In *Ex parte Peterson*, 166 Fed. 536, it is held that federal courts may grant relief to a party aggrieved by the action of officials of the department directing the deportation of an alien, when the evidence before such official and on which he acts is uncontradicted and establishes, as a matter of law, that the case is not within the statute. *That rule is conclusive of this case.*

In *United States, ex. rel. Klein vs. Williams*, 189 Fed. 915, the court held that if there is no evidence that an alien immigrant is within one of the excluded classes the immigration authorities have no power to exclude him and order his deportation, and if they do so, such order is a nullity, and he is entitled to discharge from detention thereunder by a writ of habeas corpus.

In the case of *United States vs. Chin Len*, 187 Fed. 544, the relator, a person of the Chinese race, after entering the United States was arrested and taken before a Commissioner who, after a hearing, found him to be a native-born citizen, and entitled to remain in this country, and entered judgment accordingly. More than seven years afterwards the relator left for China on a visit and presented a certified copy of the judgment to the inspector at the port of departure, who made an endorsement thereon. On his return to the same port he was denied admission. There was no evidence that he was not the same person who departed, or to whom the commis-

sioner's judgment related, nor to impeach such judgment, which, on the contrary, was proved to be genuine. Held that under such facts the inspector was not justified in arbitrarily disregarding it, and that his failure to give it proper weight and credit was a denial to the relator of a fair hearing. That authority is in point here.

Apply the same rule to this case and we see that

In the case of *Pang Sho Yin vs. United States*, 154 Fed. Rep. 660, the evidence showed that petitioner was born in the United States, and nothing to the contrary except a statement made by the petitioner, when arrested. He was ordered discharged.

In *Zakonaite vs. Wolf*, 226 U. S. 603, the Supreme Court of the United States reviewed the evidence to see if "it was adequate to support the findings of fact by the immigration officer," the court holding that the courts may go back of the findings of the immigration authorities to see "if the evidence was adequate to support the Secretary's conclusions, and the alien was given a fair hearing."

The logical sequence from the rule is that if the evidence is not adequate to support the findings, the order will be reversed. Any other rule would place the constitutional right of an American-born citizen to land in the United States, or any of its Territories, within the arbitrary will of the immigration officer, an idea that is intolerable. The return of the respondent takes the unique ground that it is neither held that the petitioner is a Chinese laborer, or not a Chinese laborer. It further takes the position that he has lost the right and privileges of his Hawaiian birth, by absence, and counsel for the Government appears to rely upon that fact, something which is a

mere matter of law, and wrongfully determined by the immigration officer. It is inconceivable that Congress intended to place the constitutional rights of the citizen at the arbitrary whim and caprice of immigration officers, or of the Secretary of Commerce and Labor, or intend to usurp and set at naught the functions of the Judicial Department by making the decision of the immigration officer, or of the Secretary of Commerce and Labor, final as to questions of law.

Since December 2, 1912, the date of the decision in the *Zakonaite* case, *supra*, the case of *McNamara vs. Henkle* has been decided (226 U. S. 520), which further lays down the rule that in habeas corpus the failure of the immigration authorities to give full faith and credit to the Hawaiian birth certificate of the appellant and the other evidence which he introduced showing his Hawaiian birth was "failure to give it proper weight and credit," and was a denial to the appellant of a fair hearing.

courts may look into the evidence to see if it is sufficient to establish the facts, upon which one alleged to be a fugitive from justice has been extradited, as showing the commission of a crime, and to see if he has been held upon legal evidence. Apply the same rule to this case, and this court must hold that the evidence in this case fails to establish Hawaiian birth and does establish the foreign birth of the petitioner, something which this, nor any other court, can fairly do from the evidence; and something which the immigration Inspector in Charge did not do. There is no finding of fact to the effect that the petitioner is of foreign birth, or a Chinese laborer, or comes within any of the excluded classes. On the other hand, all of the evidence tends to establish his

Hawaiian birth, and identifies him as the holder of the Hawaiian birth certificate which he presented, and which the Inspector in Charge has, and which the respondent has failed to bring into this court. To uphold the decision of the immigration authorities upon the evidence in this case would be tantamount to placing the liberty and rights of native-born citizens on the mere caprice and whim of immigration authorities, and to hold that the appellant had a fair trial, including a fair decision, that he was not of Hawaiian birth, but that he is a Chinese laborer of foreign birth, in the absence of evidence to establish these facts, and in the face of evidence to the contrary. Such a condition or result was never intended by Congress, nor by the courts in any decision which we have found, but such is the effect of the contention of the appellee in this case.

Going back again to the return of the appellee to the writ of habeas corpus (Tr. 91), we find the said return to be inconsistent. In the second paragraph it is alleged "That if either the petitioner or his parents were ever entitled to entrance into and residence in the United States, the same has long since been abandoned." In the third paragraph there is a denial that the appellant was born at Waikiki, in the Territory of Hawaii, but this denial is destroyed by the further allegation that by acts of his parents citizenship either of the parents of said petitioner or the petitioner himself were surrendered, abrogated and entirely of naught in so far as this proceeding is concerned. And in the fifth paragraph, appellee says he neither admits nor denies the allegations of paragraph three of the said petition. There is in said return no positive allegation showing that the appellant is of foreign birth and no allegation of fact

showing that he belongs to any of the excluded classes of immigrants. The burden is on the immigration authorities to show this, not only by way of allegation in the return, but by proof.

With all due respect to the learned Judge who tried this case below, we desire to say that the written opinion, argumentative in its nature, filed by him October 13, 1913, nearly four months after this appeal has been taken and perfected, should not be considered by the appellate court, regardless of whether it deals fairly or unfairly with the appellant.

At page 155 the learned Judge refers to the report of Inspector Moore to the Inspector, something which was unknown to the petitioner and unknown to his counsel and never discovered until by a grilling cross-examination of Mr. Halsey it was reluctantly brought out, Mr. Halsey endeavoring by every means to suppress it. (See his testimony, Tr. 121-127.) To show that there is no record of the departure of the applicant, the appellant here, from Hawaii, it appears that the learned Judge referred to the gratuitous statement made by Mr. Halsey on the witness stand, "You will find that the people who made the affidavits are witnesses in the case," for the purpose of showing that the witnesses who appeared before the Secretary of the Territory and testified on the application for the Hawaiian birth certificate are witnesses who appeared before the immigration authorities. This gratuitous fact brought out by Mr. Halsey at his own volition, and not in response to any question asked him, is turned, distorted and twisted to make it a club to be used in preventing the entry of a native-born citizen. It is insisted on the one hand that the report of Merlen J. Moore is a part

of the record. Yet the learned Judge, discussing it in his posthumous opinion, says it was not a part of the record. Yet, at the expense of great effort on the part of petitioner, the fact was brought out from Mr. Halsey that it was sent to the immigration authorities at Washington on appeal and his voluntary statement that it was not considered by the authorities, and such documents are never considered, we regard as of no weight at all. This record teems with evidence showing that records relating to the departure and arrival of different immigrants were considered by the authorities, but not shown to the appellant on his application; that cognizance of the personnel of the witnesses who appeared before the Secretary of the Territory on the application for an Hawaiian birth certificate, criticisms and strictures upon the evidence of witnesses made by Merlen J. Moore, Chinese Inspector, to the Inspector in Charge, all unknown to the appellant, were considered not only by the immigration authorities, but by the learned Judge in his said opinion, we contend is sufficient to establish the unfairness of the hearing given. And the learned Judge in this opinion, written so long after the case had been decided and the appeal perfected, appears to decide as a question of fact whether or not the petitioner was of Hawaiian birth; yet at the hearing, when numerous witnesses are brought to show that he was born in Hawaii, the Judge peremptorily refused to hear them, rejected the offer of proof made to show *aliunde* the record, the Hawaiian birth of the appellant, and yet learnedly argues from certain discrepancies in the testimony as a matter of fact that the appellant was not born in Hawaii. Such procedure before the immigration authorities and before a court might be held

to be a technically "fair hearing," but we doubt if this Honorable Court can, or will, so hold.

The learned trial Judge closes his said opinion with these words: "They serve only to suggest the question whether, even in spite of any unfairness before these officers, the petitioner would be found on a full and fair hearing to be entitled to land." Did he mean by this to admit that the appellant had not had a fair hearing before the immigration officers?

We submit that, upon a careful study of the record in this case, that this is one of the cases coming within the purview of the decisions quoted in this brief and shows specifically that it is one of those cases in which the court should hear the evidence as to the citizenship of the appellant and fairly and justly decide that question.

The immigration and Chinese exclusion Acts were intended to keep cheap Oriental labor out of the United States. They were not intended, as has so often been held by the Courts, to apply to a natural-born citizen, and keep him out of the country. The jurisdiction of the immigration authorities to deport an immigrant who comes here depends upon his being within the excluded classes. They have no jurisdiction in case of a citizen. The fact of citizenship cannot be lightly thrust aside, because the immigrant, native born, does not identify witnesses that he saw last when he was eight or nine years old, and whom he had not seen for something like fourteen years. Human experience should teach any one the futility and injustice of so holding. In the Judge's opinion filed October 13, 1913, he refers (Trans. 152) to the effect of the testimony of Lee Yau and Lee Sau, as shown by the letter of April 2 (Trans. 110, 112),

Merlen J. Moore's report. We submit that this is not a fair criticism of the evidence. Moore (Tr. 111) says that Lee Lau told of seeing appellant in China when he was 4 or 5 years old, and later admits that he never saw him until 1911. We submit that this witness gave no such evidence. That he did testify to seeing appellant in China when appellant was 4 or 5 years old, and did not know him until he came from Hawaii; that he did not play with him until 1910, when he went back to China (Tr. 56-63), and that appellant did not tell him that he (appellant) was born in China until his trip here in 1910 or 1911.

Moore says (Tr. 111) that Lee Lun told a similar story. We submit that this is not true. Lee Lun testified (Tr. 64-69), in substance, that he was born in Sun Chin, China, and lived there until he was 19, when he came to Hawaii; that he first saw appellant when the latter was 4 or 5 years old; that his parents brought him from Hawaii; that witness left China when appellant was 8 or 9 years old; that he saw appellant in Sun Chin, China, when he went back in 1910; that he saw the parents of appellant when they arrived with appellant in China, and that they came to the village of Sun Chin in a small boat.

Moore comments (Tr. 111) upon the fact that the witness Lee Sau testified to knowing appellant and his family in China, and visiting them often, and that this witness picked out the appellant at the detention shed, and identified him, and that the appellant was unable to identify the witness. This witness says that appellant was four years old when he came to China from Hawaii; that four years after witness came to Hawaii and stayed until 1908, when he went back to China, and saw appellant and recognized him. Appellant was unable to identify the

witness, but said, "It seems to me that I saw him in the village."

Moore also criticizes the evidence of Lee King (Tr. 112), who testified to having seen appellant in Hawaii when he was 3 or 4 years old, and to knowing appellant in Hawaii for about a year before his parents took him back to China, and to the fact that he did not recognize appellant in 1908 or 1909 when witness went back again to China, but was told who he was by his parents. This fact does not discredit the witness. A boy 13 years old meets another boy 3 years old; and when the latter is 4 years old he goes away, and they meet something like 17 years later and the older one fails to recognize the younger one. Would either of the Honorable Judges of this court do differently under similar circumstances? (Tr. 75-80.)

Mr. Halsey, while testifying, when asked if he read certain documents—reports of Merlen J. Moore, for instance—would say, "I considered the record; I examined the record," etc. It would be unnatural, and perhaps improbable, for the Inspector in Charge to read the voluminous transcript of the evidence in all of the hundreds of cases coming under his supervision. Why was such a detailed report, and purported synopsis of the testimony, given by the Chinese Inspector, Moore, unless it be to reduce the labor of the Inspector in Charge and furnish the basis for the decision?

We desire to call attention to Act 96 enacted by the Legislature of Hawaii and approved the 17th day of April, A. D. 1911, which is in words and figures as follows, to-wit:

"ACT 96.

AN ACT

TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF
HAWAIIAN BIRTH.

*Be it Enacted by the Legislature of the Territory of
Hawaii:*

Section 1. The Secretary of Hawaii may, whenever satisfied that any person was born within the Hawaiian Islands, cause to be issued to such person a certificate showing such fact. The Secretary, with the approval of the Governor, may make such regulations respecting the form of application and certificates, the method of proof, kind of evidence, and time, place and manner of hearing, and all other matters and circumstances connected with such application, proof and hearing as to him may appear necessary, and such regulations, when so approved and published once a week for three consecutive weeks in a newspaper of general circulation published in the Territory, shall have the force of law, and such publication shall be deemed legal notice to all persons. The Secretary may furnish the form of such applications and certificates. All applications shall be by sworn petition, in which the party shall set forth circumstantially all the facts upon which his application rests, and shall be accompanied by sworn affidavits of witnesses. The Secretary and such persons as he may designate and appoint may examine, under oath, any applicant or persons cognizant of the facts regarding any application and for that purpose he and they are hereby authorized and empowered to administer oaths, subpoena and compel the attendance of witnesses and the production of books and papers, punish for contempts and, generally, to exercise the same authority with regard to their special jurisdiction as is by law conferred on District Magistrates.

Section 2. Any applicant or any person, who shall

give or offer any false testimony, oral or written, under oath, in support or respect of any application for a certificate under the provisions of the foregoing Section, shall be deemed guilty of perjury and shall be punishable accordingly.

Section 3. Any certificate of Hawaiian Birth heretofore issued under or by virtue of any law of the Territory, or which may be issued in conformity with the provisions of this Act, shall be *prima facie* evidence of the facts therein stated.

Section 4. A fee of Five Dollars (\$5.00) shall be charged by the Secretary before issuing any such certificate; all such fees received shall be paid by the Secretary to the Treasurer of the Territory, as a government realization.

Section 5. This Act shall take effect from and after the date of its approval."

The Statute provides for the granting of birth certificates by a procedure judicial in its nature, and makes the granting of the certificate *prima facie* evidence of the facts therein stated.

It is certainly a rightful subject of legislation and one granted by Congress in the Organic Act creating the Territory of Hawaii to the Legislature of Hawaii, hence is authorized by sanction of Congress and the provisions of the Statute are entitled to full force. In the absence of any negation of Congress, this Statute stands on the same footing as if it had been enacted by Congress. The courts have no right to ignore, or declare it nugatory. This view is strengthened by Section 906 of the Revised Laws of the United States, which certainly intends to give some force and effect to certificates issued by state and territorial governments. We desire to emphasize further the fact that in the absence of any showing of fraud in procuring the issuance of such cer-

tificate of Hawaiian birth, and in the absence of impeaching testimony, the facts therein stated must be taken as established; that the record is full of evidence sustaining the said certificate and showing that it rightfully issued, and there is no evidence impeaching it whatever. The certificate is not conclusive; no one claims that it is. It does, however, make a *prima facie* case calling for evidence to contradict the facts stated in it, and in the absence of such evidence it must be given full faith and credit in the Federal Courts the same as the territorial courts of Hawaii must give to it. In response to the suggestion or request of the trial judge that both parties file briefs touching the weight to be given to such certificates (Tr. 109), the appellant in this case filed with the trial judge a brief citing and commenting on the said Statute relating to Hawaiian birth certificates and making the same argument made above in relation thereto.

The case of *Williams vs. United States*, 137 U. S. 113, at first glance, probably fails to sustain our view as to the effect of the Hawaiian birth certificate; but, that case is easily distinguished from the case at bar. The gist of the decision in that case is that the State of Virginia could not, by legislative or administrative act, bind the United States Government in a matter over which Congress had exclusive jurisdiction and authority. In that case it was held that the report of the Commissioner of the State of Virginia, approved by the Governor, to the effect that Col. Taylor was entitled to half pay as an officer of the line in the Continental army, was not binding on the United States, especially in the absence of all records showing that he was such officer, and attached to the line, which would be in existence if he was such

officer. In other words, said report was treated as *prima facie*, but not conclusive as evidence, or a judgment against the United States, and subject to impeachment; and the court held that the absence of the records which would exist if the conclusion of the commissioner was correct, was sufficient to overcome it. We claim that that decision is not in point here.

Where one claiming the right to land as an American by birth, like the appellant here, exhibits to the Immigration authorities a certificate showing such birth, issued under the solemn provisions of a positive law, authorized by Congress, unrepealed by Congress, and establishes his identity as the person named in and to whom the certificate issued, he has, under Section 1, Article XIV, of Amendments to the United States Constitution, taken himself out of the jurisdiction of the Immigration authorities, in the absence of positive evidence showing that the facts stated in such certificate are not true. The production of the certificate shifts the burden upon the government, whose officers cannot keep an American citizen from landing. Here there is no question of the identity of the appellant as the person to whom said certificate issued, but his identity is admitted. He must, therefore, until the facts stated in the Hawaiian Birth Certificate are disproved by positive evidence, be treated as an American citizen by birth; and, it must be held that the Immigration authorities have no jurisdiction over him or power to prevent his landing or to order his deportation.

We submit upon the record, that appellant was, contrary to law, denied a landing; that he is a citizen; that he does not belong to any excluded class of aliens; that the return was insufficient, and in the face of his claim of citizenship, and Hawaiian Birth

Certificate, failing, as it did, to state positively and affirmatively any fact showing that appellant belongs to one of the classes of persons excluded from entry, the exceptions to said return should have been sustained, and the appellant should have been discharged, unless a further return had been made showing just cause of detention. We submit that the gist of the return is this: We, the immigration authorities, are not certain that appellant is a citizen; we do not say that he was not born in Hawaii, but we do say that if he was born in Hawaii, his absence from Hawaii, with his parents, since 1892, works an abandonment of his citizenship; that we fairly heard your evidence, but a fair hearing does not include a fair decision upon the evidence, and that we are a power unto ourselves, beyond and above the power of any court, and what we say must be obeyed.

We submit that the judgment appealed from should be reversed, and the cause remanded with instructions to the District Court to discharge the appellant from custody on the ground of his citizenship.

Respectfully,

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